

COMMITTEE ON JUDICIARY
HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1510
(Reference to Senate engrossed bill)

Strike everything after the enacting clause and insert:

"Section 1. Section 13-4501, Arizona Revised Statutes, is amended to read:

13-4501. Definitions

In this chapter, unless the context otherwise requires:

1. "Clinical liaison" means a mental health expert or any other individual who has experience and training in mental health or developmental disabilities and who is qualified and appointed by the court to aid in coordinating the treatment or training of individuals who are found incompetent to stand trial. If intellectual disability is an issue, the clinical liaison shall be an expert in intellectual disabilities.

2. "DANGEROUS" MEANS, EXCEPT AS USED IN PARAGRAPH 7 OF THIS SECTION, A THREAT TO PUBLIC SAFETY AND IS LIKELY, AS A RESULT OF A MENTAL ILLNESS, DEFECT OR DISABILITY, TO COMMIT AN ACT OF VIOLENCE OR CAUSE SERIOUS PHYSICAL INJURY TO ANOTHER PERSON.

~~2.~~ 3. "Incompetent to stand trial" means that as a result of a mental illness, defect or disability a defendant is unable to understand the nature and object of the proceeding or to assist in the defendant's defense. In the case of a person under eighteen years of age when the issue of competency is raised, incompetent to stand trial also means a person who does not have sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding or who does not have a rational and factual understanding of the proceedings against the person. The

1 presence of a mental illness, defect or disability alone is not grounds for
2 finding a defendant incompetent to stand trial.

3 ~~3-~~ 4. "Mental health expert" means a physician who is licensed
4 pursuant to title 32, chapter 13 or 17 or a psychologist who is licensed
5 pursuant to title 32, chapter 19.1 and who is:

6 (a) Familiar with this state's competency standards and statutes AND
7 CRIMINAL AND INVOLUNTARY COMMITMENT STATUTES.

8 (b) Familiar with the treatment, training and restoration programs
9 that are available in this state.

10 (c) Certified by the court as meeting court developed guidelines using
11 recognized programs or standards.

12 ~~4-~~ 5. "Mental illness, defect or disability" means a psychiatric or
13 neurological disorder that is evidenced by behavioral or emotional symptoms,
14 including congenital mental conditions, conditions resulting from injury or
15 disease and developmental disabilities as defined in section 36-551.

16 6. "SECURE MENTAL HEALTH FACILITY" MEANS A LICENSED FACILITY UNDER THE
17 SUPERVISION OF THE SUPERINTENDENT OF THE ARIZONA STATE HOSPITAL.

18 ~~5-~~ 7. "Threat to public safety" means charged with the commission of
19 any of the following:

20 (a) A crime involving the discharge, use or threatening exhibition of
21 a deadly weapon or dangerous instrument or the infliction of physical injury
22 on another person.

23 (b) A dangerous crime against children pursuant to section 13-705.

24 (c) Two or more nondangerous felonies within a period of twenty-four
25 months.

26 Sec. 2. Section 13-4503, Arizona Revised Statutes, is amended to read:

27 13-4503. Request for competency examination; request for
28 sexually violent person screening

29 A. At any time after the prosecutor charges a criminal offense by
30 complaint, information or indictment, any party or the court on its own
31 motion may request in writing that the defendant be examined to determine the
32 defendant's competency to stand trial, to enter a plea or to assist the

1 defendant's attorney. The motion shall state the facts on which the mental
2 examination is sought.

3 B. Within three working days after a motion is filed pursuant to this
4 section, the parties shall provide all available medical and criminal history
5 records to the court.

6 C. The court may request that a mental health expert assist the court
7 in determining if reasonable grounds exist for examining a defendant.

8 D. Once any court determines that reasonable grounds exist for further
9 competency proceedings, the superior court shall have exclusive jurisdiction
10 over all competency hearings.

11 E. IF THE DEFENDANT IS CHARGED WITH A SEXUALLY VIOLENT OFFENSE AS
12 DEFINED IN SECTION 36-3701 AND THE COUNTY ATTORNEY REQUESTS A SCREENING, THE
13 COURT MAY ORDER A SCREENING OF THE DEFENDANT TO DETERMINE IF THE DEFENDANT IS
14 A SEXUALLY VIOLENT PERSON.

15 Sec. 3. Section 13-4505, Arizona Revised Statutes, is amended to read:

16 13-4505. Appointment of experts; costs

17 A. If the court determines pursuant to section 13-4503 that reasonable
18 grounds exist for a competency examination, the court shall appoint two or
19 more mental health experts to examine the defendant, issue a report and, if
20 necessary, testify regarding the defendant's competency. The court, on its
21 own motion or ~~upon~~ ON motion of any party, may order that one of the mental
22 health experts appointed shall be a physician specializing in psychiatry and
23 licensed pursuant to title 32, chapter 13 or 17. The state and the
24 defendant, ~~upon~~ ON approval of the court, may stipulate to the appointment of
25 only one expert.

26 B. The court may order the defendant to submit to physical,
27 neurological or psychological examinations, if necessary, to adequately
28 determine the defendant's mental condition.

29 C. IF THE COURT HAS ORDERED A SCREENING OF THE DEFENDANT TO DETERMINE
30 IF THE DEFENDANT IS A SEXUALLY VIOLENT PERSON, ONE OF THE MENTAL HEALTH
31 EXPERTS APPOINTED BY THE COURT SHALL BE A COMPETENT PROFESSIONAL AS DEFINED
32 IN SECTION 36-3701. IF THAT EXPERT DETERMINES THAT THE DEFENDANT IS

1 INCOMPETENT TO STAND TRIAL AND NOT RESTORABLE TO COMPETENCY WITHIN TWENTY-ONE
2 MONTHS, THE EXPERT SHALL DETERMINE WHETHER THE DEFENDANT MAY BE A SEXUALLY
3 VIOLENT PERSON.

4 ~~C.~~ D. The court shall order the defendant to pay the costs of the
5 court ordered examination, except that if the court finds the defendant is
6 indigent or otherwise unable to pay all or any part of the costs or if the
7 prosecution requested the examination, the court shall order the county to
8 pay the costs of the examination or, if the case is referred by a municipal
9 court judge, the court shall order the city to pay the costs of the
10 examination.

11 ~~D.~~ E. This section does not prohibit any party from retaining its own
12 expert to conduct any additional examinations at its own expense.

13 ~~E.~~ F. A person who is appointed as a mental health expert or clinical
14 liaison is entitled to immunity, except that the mental health expert or
15 clinical liaison may be liable for intentional, wanton or grossly negligent
16 acts that are done in the performance of the expert's or liaison's duties.

17 Sec. 4. Section 13-4508, Arizona Revised Statutes, is amended to read:

18 13-4508. Privilege against self-incrimination; sealed reports

19 A. The privilege against self-incrimination applies to any examination
20 that is ordered by the court pursuant to this chapter.

21 B. Any evidence or statement that is obtained during an examination is
22 not admissible at any proceeding to determine a defendant's guilt or
23 innocence unless the defendant presents evidence that is intended to rebut
24 the presumption of sanity.

25 C. Any statement made by the defendant during an examination or any
26 evidence resulting from that statement concerning any other event or
27 transaction is not admissible at any proceeding to determine the defendant's
28 guilt or innocence of any other criminal charges that are based on those
29 events or transactions, EXCEPT THAT A STATEMENT OR EVIDENCE MAY BE USED BY
30 ANY PARTY IN A HEARING TO DETERMINE IF THE DEFENDANT IS ELIGIBLE FOR
31 COMMITMENT PURSUANT TO SECTION 13-4518.

1 D. Any statement made by the defendant or any part of the evaluations
2 that is obtained during an examination may not be used for any purpose
3 without the written consent of the defendant or the defendant's guardian or a
4 court order that is entered by the court that ordered the examination or that
5 is conducting a dependency or severance proceeding.

6 E. After a plea of guilty or guilty except insane or the trial or
7 after the defendant is found to be unable to be restored to competence, the
8 court shall order all the reports submitted pursuant to this section sealed.
9 The court may order that the reports be opened only as follows:

10 1. For use by the court or defendant, or by the prosecutor if
11 otherwise permitted by law, for further competency or sanity evaluations OR
12 IN A HEARING TO DETERMINE WHETHER THE DEFENDANT IS DANGEROUS AND ELIGIBLE FOR
13 COMMITMENT PURSUANT TO SECTION 13-4518 OR ELIGIBLE FOR COURT ORDERED
14 TREATMENT PURSUANT TO TITLE 36, CHAPTER 5.

15 2. For statistical analysis.

16 3. When the records are deemed necessary to assist in mental health
17 treatment pursuant to section 13-502 or 13-4517.

18 4. For use by the probation department or the state department of
19 corrections if the defendant is in the custody of or is scheduled to be
20 transferred into the custody of the state department of corrections for the
21 purposes of assessment and supervision or monitoring of the defendant by that
22 department.

23 5. For use by a mental health treatment provider that provides
24 treatment to the defendant or that assesses the defendant for treatment.

25 6. For data gathering.

26 7. For scientific study.

27 F. Any statement made by the defendant during an examination that is
28 conducted pursuant to this chapter or any evidence resulting from that
29 statement is not subject to disclosure pursuant to section 36-509.

30 Sec. 5. Section 13-4509, Arizona Revised Statutes, is amended to read:

31 13-4509. Expert's report

1 A. An expert who is appointed pursuant to section 13-4505 shall submit
2 a written report of the examination to the court within ten working days
3 after the examination is completed. The report shall include at least the
4 following information:

- 5 1. The name of each mental health expert who examines the defendant.
- 6 2. A description of the nature, content, extent and results of the
7 examination and any test conducted AND OF ANY INSTRUMENT OR TOOL USED TO
8 ASSESS WHETHER THE DEFENDANT IS LIKELY TO BE DANGEROUS.
- 9 3. The facts on which the findings are based.
- 10 4. An opinion as to the competency of the defendant.

11 B. If the mental health expert determines that the defendant is
12 incompetent to stand trial, the report shall also include the following
13 information:

- 14 1. The nature of the mental disease, defect or disability that is the
15 cause of the incompetency.
- 16 2. The defendant's prognosis.
- 17 3. THE NATURE OF THE MENTAL HEALTH DISORDER, DISEASE OR DEFECT OR OF
18 ANY PERSONALITY OR OTHER DISORDER THAT MAKES THE DEFENDANT LIKELY TO BE
19 DANGEROUS OR A SEXUALLY VIOLENT PERSON.

20 ~~3.~~ 4. The most appropriate form and place of treatment in this state,
21 based on the defendant's therapeutic needs and potential threat to public
22 safety.

23 ~~4.~~ 5. Whether the defendant is incompetent to refuse treatment and
24 should be subject to involuntary treatment.

25 6. IF THE PROGNOSIS INCLUDES A DETERMINATION AS TO WHETHER THERE IS NO
26 SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL REGAIN COMPETENCY WITHIN
27 TWENTY-ONE MONTHS AFTER THE DATE OF THE ORIGINAL FINDING OF INCOMPETENCY,
28 WHETHER THE DEFENDANT SHOULD BE CONSIDERED DANGEROUS OR MAY BE A SEXUALLY
29 VIOLENT PERSON.

30 C. If the mental health examiner determines that the defendant is
31 currently competent by virtue of ongoing treatment with psychotropic
32 medication, the report shall address the necessity of continuing that

1 treatment and shall include a description of any limitations that the
2 medication may have on competency.

3 Sec. 6. Section 13-4515, Arizona Revised Statutes, is amended to read:

4 13-4515. Duration of order; excluded time calculation; notice
5 of dismissed charge or voided order; petitions

6 A. An order or combination of orders that is issued pursuant to
7 section 13-4512 or 13-4514 shall not be in effect for more than twenty-one
8 months or the maximum possible sentence the defendant could have received
9 pursuant to section 13-702, section 13-703, section 13-704, subsection A, B,
10 C, D or E, section 13-705, section 13-706, subsection A, section 13-708,
11 subsection D or section 13-751 or any section for which a specific sentence
12 is authorized, whichever is less. In making this determination the court
13 shall not consider the sentence enhancements under section 13-703 or 13-704
14 for prior convictions.

15 B. The court shall only consider the time a defendant actually spends
16 in a restoration to competency program when calculating the time requirements
17 pursuant to subsection A of this section.

18 C. The court shall notify the prosecutor, the defense attorney, the
19 medical supervisor and the treating facility if the charges against the
20 defendant are dismissed or if an order is voided by the court. No charges
21 shall be dismissed without a hearing ~~prior to~~ BEFORE the dismissal.

22 D. If a defendant is discharged or released on the expiration of an
23 order or orders issued pursuant to section 13-4512 or 13-4514, the medical
24 supervisor may file a petition stating that the defendant requires further
25 treatment pursuant to title 36, chapter 5, ~~or~~ appointment of a guardian
26 pursuant to title 14 OR INVOLUNTARY COMMITMENT PURSUANT TO SECTION 13-4518
27 BECAUSE THE DEFENDANT IS DANGEROUS.

28 Sec. 7. Section 13-4517, Arizona Revised Statutes, is amended to read:

29 13-4517. Incompetent defendants; disposition

30 A. If the court finds that a defendant is incompetent to stand trial
31 and that there is no substantial probability that the defendant will regain

1 competency within twenty-one months after the date of the original finding of
2 incompetency, any party may request that the court:

3 1. Remand the defendant to the custody of the department of health
4 services for the institution of civil commitment proceedings pursuant to
5 title 36, chapter 5 AND ORDER THE PROSECUTOR TO FILE A PETITION FOR
6 EVALUATION AND PROVIDE ANY KNOWN CRIMINAL HISTORY FOR THE DEFENDANT.

7 2. Appoint a guardian pursuant to title 14, chapter 5.

8 3. Release the defendant from custody and dismiss the charges against
9 the defendant without prejudice.

10 4. HOLD A HEARING TO DETERMINE IF THE DEFENDANT IS DANGEROUS AND
11 SHOULD BE INVOLUNTARILY COMMITTED PURSUANT TO SECTION 13-4518.

12 B. IF THE COURT ENTERS AN ORDER PURSUANT TO SUBSECTION A, PARAGRAPH 1,
13 2 OR 4 OF THIS SECTION, THE COURT MAY ALSO ORDER AN ASSESSMENT OF THE
14 DEFENDANT'S ELIGIBILITY FOR PRIVATE INSURANCE OR PUBLIC BENEFITS THAT MAY BE
15 APPLIED TO THE EXPENSES OF THE DEFENDANT'S MEDICALLY NECESSARY MAINTENANCE
16 AND TREATMENT, INCLUDING SERVICES PURSUANT TO TITLE 36, CHAPTER 29,
17 STATE-ONLY BEHAVIORAL HEALTH SERVICES, TITLE XVIII SERVICES AND MEDICARE PART
18 D PRESCRIPTION DRUG BENEFITS, SUPPLEMENTAL SECURITY INCOME AND SUPPLEMENTAL
19 SECURITY DISABILITY INCOME.

20 C. THE COURT MAY RETAIN JURISDICTION OVER THE DEFENDANT UNTIL THE
21 DEFENDANT IS COMMITTED FOR TREATMENT PURSUANT TO TITLE 36, CHAPTER 5 OR A
22 GUARDIAN IS APPOINTED PURSUANT TO TITLE 14, CHAPTER 5.

23 D. IF THE COURT REMANDS THE DEFENDANT TO THE CUSTODY OF THE DEPARTMENT
24 OF HEALTH SERVICES FOR THE INSTITUTION OF CIVIL COMMITMENT PROCEEDINGS
25 PURSUANT TO TITLE 36, CHAPTER 5 AND THE COURT IS NOTIFIED THAT THE DEFENDANT
26 HAS NOT HAD A CIVIL COMMITMENT EVALUATION, THE COURT SHALL ORDER THE SHERIFF
27 TO TAKE THE DEFENDANT INTO CUSTODY SO THAT THE COURT MAY EXPLORE OPTIONS
28 PURSUANT TO SUBSECTION A, PARAGRAPH 2 OR 3 OF THIS SECTION. IF THE DEFENDANT
29 IS OUT OF CUSTODY, THE COURT MAY ORDER THAT THE DEFENDANT BE TAKEN INTO
30 CUSTODY FOR A DISPOSITION PURSUANT TO THIS SECTION.

31 E. IF A MENTAL HEALTH EXPERT HAS DETERMINED THAT THE DEFENDANT MAY BE
32 A SEXUALLY VIOLENT PERSON, THE MENTAL HEALTH EXPERT SHALL PROVIDE THE REPORT

1 TO THE PROSECUTING AGENCY SO THAT THE PROSECUTING AGENCY MAY FILE A PETITION
2 PURSUANT TO SECTION 36-3702.

3 Sec. 8. Title 13, chapter 41, Arizona Revised Statutes, is amended by
4 adding section 13-4518, to read:

5 13-4518. Dangerous and incompetent defendants: commitment
6 hearing; disposition

7 A. IF AN INCOMPETENT DEFENDANT IS FOUND TO BE NOT RESTORABLE TO
8 COMPETENCY, THE STATE MAY REQUEST A HEARING TO DETERMINE IF THE DEFENDANT IS
9 DANGEROUS AND SHOULD BE INVOLUNTARILY COMMITTED.

10 B. IF THERE HAS NOT BEEN A PREVIOUS EVALUATION TO DETERMINE WHETHER
11 THE DEFENDANT IS DANGEROUS, THE DEFENDANT SHALL BE EXAMINED BY MENTAL HEALTH
12 EXPERTS IN THE SAME MANNER PRESCRIBED IN SECTION 13-4505 TO DETERMINE IF THE
13 DEFENDANT SHOULD BE CONSIDERED DANGEROUS.

14 C. AT A HEARING TO DETERMINE IF THE DEFENDANT IS DANGEROUS THE STATE
15 SHALL ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT IS
16 DANGEROUS AND THAT THE DEFENDANT COMMITTED THE ACTS THAT CONSTITUTE THE
17 CHARGED OFFENSE. IF THE COURT DOES NOT FIND THE DEFENDANT IS DANGEROUS, THE
18 COURT SHALL PROCEED PURSUANT TO SECTION 13-4517, SUBSECTION A, PARAGRAPH 1, 2
19 OR 3.

20 D. IF THE COURT FINDS THAT THE DEFENDANT IS DANGEROUS, THE COURT SHALL
21 ORDER THE DEFENDANT TO BE COMMITTED TO A SECURE STATE MENTAL HEALTH FACILITY
22 LICENSED BY THE DEPARTMENT OF HEALTH SERVICES OR THE JOINT COMMISSION ON
23 ACCREDITATION OF HEALTH CARE ORGANIZATIONS. THE DEFENDANT SHALL RECEIVE
24 EDUCATION, CARE, SUPERVISION AND TREATMENT TO RENDER THE DEFENDANT EITHER
25 COMPETENT OR NONDANGEROUS.

26 E. IF THE COURT ISSUES A COMMITMENT ORDER PURSUANT TO THIS SECTION:

27 1. ALL FURTHER PROCEEDINGS FOR THE DEFENDANT'S CONTINUED TREATMENT AND
28 THE CIRCUMSTANCES UNDER WHICH THE DEFENDANT MAY BE RELEASED SHALL BE
29 CONDUCTED PURSUANT TO TITLE 36, CHAPTER 40.

30 2. THE ORDER SHALL REQUIRE THAT THE DEFENDANT REMAIN COMMITTED TO THE
31 CUSTODY OF THE SECURE STATE MENTAL HEALTH FACILITY UNTIL ANY OF THE FOLLOWING
32 OCCURS:

1 (a) THE COURT FINDS THAT THE DEFENDANT IS COMPETENT TO STAND TRIAL.

2 (b) THE COURT FINDS THAT THE DEFENDANT IS NO LONGER DANGEROUS.

3 (c) THE EXPIRATION OF A PERIOD OF TIME EQUAL TO EITHER THE SENTENCE
4 THE DEFENDANT WOULD HAVE RECEIVED IF THE DEFENDANT HAD BEEN SENTENCED
5 PURSUANT TO SECTION 13-751 OR THE PRESUMPTIVE SENTENCE FOR ALL OTHER
6 OFFENSES.

7 F. THE COURT SHALL RETAIN JURISDICTION OVER A DEFENDANT WHO IS
8 COMMITTED PURSUANT TO THIS SECTION UNTIL THE COURT DISCHARGES THE DEFENDANT
9 FROM TREATMENT.

10 G. IF A DEFENDANT IS INVOLUNTARILY COMMITTED PURSUANT TO THIS SECTION,
11 THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES SHALL DETERMINE THE EXTENT
12 TO WHICH THE DEFENDANT IS RECEIVING OR IS ELIGIBLE TO RECEIVE PRIVATE OR
13 PUBLIC BENEFITS THAT MAY BE APPLIED TO THE EXPENSES OF THE DEFENDANT'S
14 MAINTENANCE AND TREATMENT THAT ARE MEDICALLY NECESSARY, INCLUDING FEDERAL AND
15 STATE MEDICAID, ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM MONIES AND
16 REGIONAL BEHAVIORAL HEALTH CARE AUTHORITY MONIES. THE DEPARTMENT MAY ACCEPT
17 THESE MONIES WITHOUT A COURT ORDER. THE DEPARTMENT IS RESPONSIBLE FOR ALL
18 REMAINING COSTS ASSOCIATED WITH THE COMMITMENT.

19 Sec. 9. Section 36-501, Arizona Revised Statutes, is amended to read:

20 36-501. Definitions

21 In this chapter, unless the context otherwise requires:

22 1. "Administration" means the Arizona health care cost containment
23 system administration.

24 2. "Admitting officer" means a psychiatrist or other physician or
25 psychiatric and mental health nurse practitioner with experience in
26 performing psychiatric examinations who has been designated as an admitting
27 officer of the evaluation agency by the person in charge of the evaluation
28 agency.

29 3. "Chief medical officer" means the chief medical officer under the
30 supervision of the superintendent of the state hospital.

31 4. "Contraindicated" means that access is reasonably likely to
32 endanger the life or physical safety of the patient or another person.

1 5. "Court" means the superior court in the county in this state in
2 which the patient resides or was found before screening or emergency
3 admission under this title.

4 6. "CRIMINAL HISTORY" MEANS POLICE REPORTS, LISTS OF PRIOR ARRESTS AND
5 CONVICTIONS, CRIMINAL CASE PLEADINGS AND COURT ORDERS, INCLUDING A
6 DETERMINATION THAT THE PERSON HAS BEEN FOUND INCOMPETENT TO STAND TRIAL
7 PURSUANT TO SECTION 13-4510.

8 ~~6.~~ 7. "Danger to others" means that the judgment of a person who has
9 a mental disorder is so impaired that the person is unable to understand the
10 person's need for treatment and as a result of the person's mental disorder
11 the person's continued behavior can reasonably be expected, on the basis of
12 competent medical opinion, to result in serious physical harm.

13 ~~7.~~ 8. "Danger to self":

14 (a) Means behavior that, as a result of a mental disorder:

15 (i) Constitutes a danger of inflicting serious physical harm on
16 oneself, including attempted suicide or the serious threat thereof, if the
17 threat is such that, when considered in the light of its context and in light
18 of the individual's previous acts, it is substantially supportive of an
19 expectation that the threat will be carried out.

20 (ii) Without hospitalization will result in serious physical harm or
21 serious illness to the person.

22 (b) Does not include behavior that establishes only the condition of
23 having a grave disability.

24 ~~8.~~ 9. "Department" means the department of health services.

25 ~~9.~~ 10. "Detention" means the taking into custody of a patient or
26 proposed patient.

27 ~~10.~~ 11. "Director" means the director of the administration.

28 ~~11.~~ 12. "Evaluation" means:

29 (a) A professional multidisciplinary analysis that may include
30 firsthand observations or remote observations by interactive audiovisual
31 media and that is based on data describing the person's identity, biography

1 and medical, psychological and social conditions carried out by a group of
2 persons consisting of not less than the following:

3 (i) Two licensed physicians, who shall be qualified psychiatrists, if
4 possible, or at least experienced in psychiatric matters, and who shall
5 examine and report their findings independently. The person against whom a
6 petition has been filed shall be notified that the person may select one of
7 the physicians. A psychiatric resident in a training program approved by the
8 American medical association or by the American osteopathic association may
9 examine the person in place of one of the psychiatrists if the resident is
10 supervised in the examination and preparation of the affidavit and testimony
11 in court by a qualified psychiatrist appointed to assist in the resident's
12 training, and if the supervising psychiatrist is available for discussion
13 with the attorneys for all parties and for court appearance and testimony if
14 requested by the court or any of the attorneys.

15 (ii) Two other individuals, one of whom, if available, shall be a
16 psychologist and in any event a social worker familiar with mental health and
17 human services that may be available placement alternatives appropriate for
18 treatment. An evaluation may be conducted on an inpatient basis, an
19 outpatient basis or a combination of both, and every reasonable attempt shall
20 be made to conduct the evaluation in any language preferred by the person.

21 (b) A physical examination that is consistent with the existing
22 standards of care and that is performed by one of the evaluating physicians
23 or by or under the supervision of a physician who is licensed pursuant to
24 title 32, chapter 13 or 17 or a registered nurse practitioner who is licensed
25 pursuant to title 32, chapter 15 if the results of that examination are
26 reviewed or augmented by one of the evaluating physicians.

27 ~~12-~~ 13. "Evaluation agency" means a health care agency that is
28 licensed by the department and that has been approved pursuant to this title,
29 providing those services required of such agency by this chapter.

30 ~~13-~~ 14. "Family member" means a spouse, parent, adult child, adult
31 sibling or other blood relative of a person undergoing treatment or
32 evaluation pursuant to this chapter.

1 ~~14.~~ 15. "Grave disability" means a condition evidenced by behavior in
2 which a person, as a result of a mental disorder, is likely to come to
3 serious physical harm or serious illness because the person is unable to
4 provide for the person's own basic physical needs.

5 ~~15.~~ 16. "Health care decision maker" has the same meaning prescribed
6 in section 12-2801.

7 ~~16.~~ 17. "Health care entity" means a health care provider, the
8 department, the administration or a regional behavioral health authority
9 under contract with the administration.

10 ~~17.~~ 18. "Health care provider" means a health care institution as
11 defined in section 36-401 that is licensed as a behavioral health provider
12 pursuant to department rules or a mental health provider.

13 ~~18.~~ 19. "Independent evaluator" means a licensed physician,
14 psychiatric and mental health nurse practitioner or psychologist selected by
15 the person to be evaluated or by such person's attorney.

16 ~~19.~~ 20. "Informed consent" means a voluntary decision following
17 presentation of all facts necessary to form the basis of an intelligent
18 consent by the patient or guardian with no minimizing of known dangers of any
19 procedures.

20 ~~20.~~ 21. "Least restrictive treatment alternative" means the treatment
21 plan and setting that infringe in the least possible degree with the
22 patient's right to liberty and that are consistent with providing needed
23 treatment in a safe and humane manner.

24 ~~21.~~ 22. "Licensed physician" means any medical doctor or doctor of
25 osteopathy who is either:

26 (a) Licensed in this state.

27 (b) A full-time hospital physician licensed in another state and
28 serving on the staff of a hospital operated or licensed by the United States
29 government.

30 ~~22.~~ 23. "Medical director of an evaluation agency" means a
31 psychiatrist, or other licensed physician experienced in psychiatric matters,
32 who is designated in writing by the governing body of the agency as the

1 person in charge of the medical services of the agency for the purposes of
2 this chapter and may include the chief medical officer of the state hospital.

3 ~~23.~~ 24. "Medical director of a mental health treatment agency" means
4 a psychiatrist, or other licensed physician experienced in psychiatric
5 matters, who is designated in writing by the governing body of the agency as
6 the person in charge of the medical services of the agency for the purposes
7 of this chapter and includes the chief medical officer of the state hospital.

8 ~~24.~~ 25. "Mental disorder" means a substantial disorder of the
9 person's emotional processes, thought, cognition or memory. Mental disorder
10 is distinguished from:

11 (a) Conditions that are primarily those of drug abuse, alcoholism or
12 intellectual disability, unless, in addition to one or more of these
13 conditions, the person has a mental disorder.

14 (b) The declining mental abilities that directly accompany impending
15 death.

16 (c) Character and personality disorders characterized by lifelong and
17 deeply ingrained antisocial behavior patterns, including sexual behaviors
18 that are abnormal and prohibited by statute unless the behavior results from
19 a mental disorder.

20 ~~25.~~ 26. "Mental health provider" means any physician or provider of
21 mental health or behavioral health services involved in evaluating, caring
22 for, treating or rehabilitating a patient.

23 ~~26.~~ 27. "Mental health treatment agency" means the state hospital or
24 a health care agency that is licensed by the department and that provides
25 those services that are required of the agency by this chapter.

26 ~~27.~~ 28. "Outpatient treatment" or "combined inpatient and outpatient
27 treatment" means any treatment program not requiring continuous inpatient
28 hospitalization.

29 ~~28.~~ 29. "Outpatient treatment plan" means a treatment plan that does
30 not require continuous inpatient hospitalization.

31 ~~29.~~ 30. "Patient" means any person undergoing examination, evaluation
32 or behavioral or mental health treatment under this chapter.

1 ~~30.~~ 31. "Peace officers" means sheriffs of counties, constables,
2 marshals and policemen of cities and towns.

3 ~~31.~~ 32. "Persistent or acute disability" means a severe mental
4 disorder that meets all the following criteria:

5 (a) If not treated has a substantial probability of causing the person
6 to suffer or continue to suffer severe and abnormal mental, emotional or
7 physical harm that significantly impairs judgment, reason, behavior or
8 capacity to recognize reality.

9 (b) Substantially impairs the person's capacity to make an informed
10 decision regarding treatment, and this impairment causes the person to be
11 incapable of understanding and expressing an understanding of the advantages
12 and disadvantages of accepting treatment and understanding and expressing an
13 understanding of the alternatives to the particular treatment offered after
14 the advantages, disadvantages and alternatives are explained to that person.

15 (c) Has a reasonable prospect of being treatable by outpatient,
16 inpatient or combined inpatient and outpatient treatment.

17 ~~32.~~ 33. "Prepetition screening" means the review of each application
18 requesting court-ordered evaluation, including an investigation of facts
19 alleged in such application, an interview with each applicant and an
20 interview, if possible, with the proposed patient. The purpose of the
21 interview with the proposed patient is to assess the problem, explain the
22 application and, when indicated, attempt to persuade the proposed patient to
23 receive, on a voluntary basis, evaluation or other services.

24 ~~33.~~ 34. "Prescribed form" means a form established by a court or the
25 rules of the administration in accordance with the laws of this state.

26 ~~34.~~ 35. "Professional" means a physician who is licensed pursuant to
27 title 32, chapter 13 or 17, a psychologist who is licensed pursuant to title
28 32, chapter 19.1 or a psychiatric and mental health nurse practitioner who is
29 certified pursuant to title 32, chapter 15.

30 ~~35.~~ 36. "Proposed patient" means a person for whom an application for
31 evaluation has been made or a petition for court-ordered evaluation has been
32 filed.

1 37. "PROSECUTING AGENCY" MEANS THE COUNTY ATTORNEY, ATTORNEY GENERAL
2 OR CITY ATTORNEY WHO APPLIED OR PETITIONED FOR AN EVALUATION OR TREATMENT
3 PURSUANT TO CHAPTER 5 OF THIS TITLE.

4 ~~36.~~ 38. "Psychiatric and mental health nurse practitioner" means a
5 registered nurse practitioner as defined in section 32-1601 who has completed
6 an adult or family psychiatric and mental health nurse practitioner program
7 and who is certified as an adult or family psychiatric and mental health
8 nurse practitioner by the state board of nursing.

9 ~~37.~~ 39. "Psychiatrist" means a licensed physician who has completed
10 three years of graduate training in psychiatry in a program approved by the
11 American medical association or the American osteopathic association.

12 ~~38.~~ 40. "Psychologist" means a person who is licensed under title 32,
13 chapter 19.1 and who is experienced in the practice of clinical psychology.

14 ~~39.~~ 41. "Records" means all communications that are recorded in any
15 form or medium and that relate to patient examination, evaluation or
16 behavioral or mental health treatment. Records include medical records that
17 are prepared by a health care provider or other providers. Records do not
18 include:

19 (a) Materials that are prepared in connection with utilization review,
20 peer review or quality assurance activities, including records that a health
21 care provider prepares pursuant to section 36-441, 36-445, 36-2402 or
22 36-2917.

23 (b) Recorded telephone and radio calls to and from a publicly operated
24 emergency dispatch office relating to requests for emergency services or
25 reports of suspected criminal activity.

26 ~~40.~~ 42. "Regional behavioral health authority" has the same meaning
27 prescribed in section 36-3401.

28 ~~41.~~ 43. "Screening agency" means a health care agency that is
29 licensed by the department and that provides those services required of such
30 agency by this chapter.

1 ~~42.~~ 44. "Social worker" means a person who has completed two years of
2 graduate training in social work in a program approved by the council of
3 social work education and who has experience in mental health.

4 ~~43.~~ 45. "State hospital" means the Arizona state hospital.

5 ~~44.~~ 46. "Superintendent" means the superintendent of the state
6 hospital.

7 Sec. 10. Section 36-521, Arizona Revised Statutes, is amended to read:

8 ~~36-521.~~ Preparation of petition for court-ordered evaluation:
9 procedures for prepetition screening

10 A. On receiving the application for evaluation, the screening agency,
11 before filing a petition for court-ordered evaluation, shall provide
12 prepetition screening within forty-eight hours excluding weekends and
13 holidays when possible to determine whether there is reasonable cause to
14 believe the allegations of the applicant for the court-ordered evaluation,
15 whether the person will voluntarily receive evaluation at a scheduled time
16 and place and whether the person has a persistent or acute disability or a
17 grave disability or is likely to present a danger to self or others until the
18 voluntary evaluation.

19 B. After prepetition screening has been completed, the screening
20 agency shall prepare a report of opinions and conclusions. If prepetition
21 screening is not possible, the screening agency shall prepare a report giving
22 reasons why the screening was not possible and including opinions and
23 conclusions of staff members who attempted to conduct prepetition screening
24 or otherwise investigated the matter.

25 C. If the prepetition screening report indicates that there exists no
26 reasonable cause to believe the allegations of the applicant for the
27 court-ordered evaluation, it shall be reviewed by the medical director of the
28 screening agency or the medical director's designee.

29 D. If, based on the allegations of the applicant for the court-ordered
30 evaluation and the prepetition screening report or other information obtained
31 while attempting to conduct a prepetition screening, the agency determines
32 that there is reasonable cause to believe that the proposed patient is, as a

1 result of mental disorder, a danger to self or to others or has a persistent
2 or acute disability or a grave disability and that the proposed patient is
3 unable or unwilling to voluntarily receive evaluation or is likely to present
4 a danger to self or to others, has a grave disability or will further
5 deteriorate before receiving a voluntary evaluation, the agency shall prepare
6 a petition for court-ordered evaluation and shall file the petition, which
7 shall be signed by the person who prepared the petition unless the county
8 attorney performs these functions. If the agency determines that there is
9 reasonable cause to believe that the person is in such a condition that
10 without immediate hospitalization he is likely to harm himself or others, the
11 agency shall take all reasonable steps to procure such hospitalization on an
12 emergency basis.

13 E. The agency may contact the county attorney in order to obtain
14 assistance in preparing the petition for court-ordered evaluation, and the
15 agency may request the advice and judgment of the county attorney in reaching
16 a decision as to whether the court-ordered evaluation is justified.

17 F. The county attorney may prepare or sign or file the petition if a
18 court has ordered the county attorney to prepare the petition.

19 G. If a petition for court-ordered evaluation alleges danger to others
20 as described in section 36-501, the screening agency, before filing such a
21 petition, shall contact the county attorney for a review of the petition.
22 The county attorney shall examine the petition and make one of the following
23 written recommendations:

- 24 1. That a criminal investigation is warranted.
- 25 2. That the screening agency shall file the petition.
- 26 3. That no further proceedings are warranted. The screening agency
27 shall consider the recommendation in determining whether a court-ordered
28 evaluation is justified and shall include the recommendation with the
29 petition if the agency decides to file the petition with the court.

30 H. The petition shall be made in the form and manner prescribed by the
31 director.

1 I. IF A PETITION FOR COURT-ORDERED EVALUATION IS FILED BY A PROSECUTOR
2 PURSUANT TO SECTION 13-4517, A PRIOR APPLICATION FOR COURT-ORDERED EVALUATION
3 OR PRESCREENING IS NOT NECESSARY.

4 Sec. 11. Section 36-523, Arizona Revised Statutes, is amended to read:

5 36-523. Petition for evaluation

6 A. The petition for evaluation shall contain the following:

7 1. The name, address and interest in the case of the individual who
8 applied for the petition.

9 2. The name, and address if known, of the proposed patient for whom
10 evaluation is petitioned.

11 3. The present whereabouts of the proposed patient, if known.

12 4. A statement alleging that there is reasonable cause to believe that
13 the proposed patient has a mental disorder and is as a result a danger to
14 self or others, has a persistent or acute disability or a grave disability
15 and is unwilling or unable to undergo voluntary evaluation.

16 5. A summary of the facts that support the allegations that the
17 proposed patient is dangerous, has a persistent or acute disability or a
18 grave disability and is unwilling or unable to be voluntarily evaluated,
19 including the facts that brought the proposed patient to the screening
20 agency's attention.

21 6. IF THE PETITION IS FILED BY A PROSECUTOR PURSUANT TO SECTION
22 13-4517, THE PETITION SHALL INCLUDE ANY KNOWN CRIMINAL HISTORY OF THE
23 PROPOSED PATIENT, INCLUDING WHETHER THE PROPOSED PATIENT HAS EVER BEEN FOUND
24 INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION 13-4510.

25 ~~6.~~ 7. Other information that the director by rule or the court by
26 rule or order may require.

27 B. The petition shall request that the court issue an order requiring
28 that the proposed patient be given an evaluation and shall advise the court
29 of both of the following:

30 1. That the opinion of the petitioner is either that the proposed
31 patient is or is not in such a condition that without immediate or continuing

1 hospitalization the patient is likely to suffer serious physical harm or
2 further deterioration or inflict serious physical harm on another person.

3 2. If the opinion of the petitioner is that the proposed patient is
4 not in the condition described in paragraph 1 of this subsection, that the
5 opinion of the petitioner is either that the evaluation should or should not
6 take place on an outpatient basis.

7 C. The petition for evaluation shall be accompanied by the application
8 for evaluation, by the recommendation of the county attorney pursuant to
9 section 36-521 and by a prepetition screening report, unless the documents
10 have not been prepared under a provision of law or in accordance with an
11 order of the court. The petition for evaluation shall also be accompanied by
12 a copy of the application for emergency admission if one exists.

13 D. A petition and other forms required in a court may be filed only by
14 the screening agency that has prepared the petition.

15 E. If the petition is not filed because it has been determined that
16 the person does not need an evaluation, the agency after a period of six
17 months shall destroy the petition and the various reports annexed to the
18 petition as required by this section.

19 F. IF THE PETITION IS NOT FILED BECAUSE IT HAS BEEN DETERMINED THAT
20 THE PERSON DOES NOT NEED AN EVALUATION AND A PROSECUTOR FILED A PETITION
21 PURSUANT TO SECTION 13-4517, THE PERSON SHALL BE REMANDED FOR A DISPOSITION
22 PURSUANT TO SECTION 13-4517. IF THE PERSON IS OUT OF CUSTODY, THE COURT MAY
23 ORDER THAT THE PERSON BE TAKEN INTO CUSTODY FOR A DISPOSITION PURSUANT TO
24 THIS SECTION.

25 G. IF THE PERSON IS THE SUBJECT OF A PETITION FILED BY A PROSECUTOR
26 PURSUANT TO SECTION 13-4517, AN EVALUATION SHALL BE COMPLETED WITHIN
27 SEVENTY-TWO HOURS AFTER THE PERSON IS DELIVERED TO THE EVALUATION AGENCY.

28 Sec. 12. Section 36-529, Arizona Revised Statutes, is amended to read:

29 36-529. Order for evaluation; order for detention; hearing

30 A. If, from the review of the petition for evaluation, the court does
31 not determine that the proposed patient is likely to present a danger to self
32 or others or further deteriorate prior to his hearing on court-ordered

1 treatment, but determines that there is reasonable cause to believe that the
2 proposed patient is, as a result of a mental disorder, a danger to self or
3 others, ~~OR~~ OR has a persistent or acute disability or a grave disability, the
4 court shall issue an order directing the proposed patient to submit to an
5 evaluation at a designated time and place, specifying that the evaluation
6 will take place on an inpatient or an outpatient basis. The court may also
7 order that if the person does not or cannot so submit, that he be taken into
8 custody by a ~~police~~ PEACE officer and delivered to an evaluation agency. If
9 the court makes such a conditional order, it shall also make a conditional
10 appointment of counsel for the person to become effective when and if the
11 person is taken into custody pursuant to this section.

12 B. If, from review of the petition for evaluation, there is reasonable
13 cause to believe that the proposed patient is, as a result of a mental
14 disorder, a danger to self or others, ~~OR~~ OR has a persistent or acute
15 disability or a grave disability and that the person requires immediate or
16 continued hospitalization prior to his hearing on court-ordered treatment,
17 the court shall order the proposed patient taken into custody and evaluated
18 at an evaluation agency. The court shall promptly appoint counsel for the
19 proposed patient. If an intercounty agreement authorizes the same, the court
20 may order that the evaluation be conducted in another county, and the
21 superior court in the county where the evaluation is conducted shall have
22 concurrent jurisdiction to make appropriate orders concerning the proposed
23 patient.

24 C. If the person is not taken into custody or if the evaluation
25 pursuant to the order of the court under subsection A or B is not initiated
26 within fourteen days from the date of the order, the order and petition for
27 evaluation shall expire. IF A PROSECUTOR FILED A PETITION PURSUANT TO
28 SECTION 13-4517, THE COURT AND THE PROSECUTING AGENCY SHALL RECEIVE NOTICE OF
29 THE EXPIRATION OF THE ORDER FOR EVALUATION. THE COURT MAY ENTER ANY ORDERS
30 NECESSARY FOR FURTHER DISPOSITION PURSUANT TO SECTION 13-4517, INCLUDING A
31 PICKUP ORDER DIRECTING THAT THE PERSON BE TAKEN INTO CUSTODY. THIS

1 SUBSECTION DOES NOT PREVENT ANY PERSON FROM INITIATING ANOTHER COURT ORDERED
2 EVALUATION OF THE PERSON PURSUANT TO TITLE 36, CHAPTER 5.

3 D. If the person is involuntarily hospitalized, the person shall be
4 informed by his appointed attorney of his rights to a hearing to determine
5 whether he should be involuntarily hospitalized for evaluation and to be
6 represented at the hearing by an attorney. If the patient requests a hearing
7 to determine whether he should be involuntarily hospitalized during
8 evaluation, the court shall schedule a hearing at its first opportunity.

9 Sec. 13. Section 36-531, Arizona Revised Statutes, is amended to read:

10 36-531. Evaluation; possible dispositions; release

11 A. A person who is being evaluated on an inpatient basis in an
12 evaluation agency shall be released if, in the opinion of the medical
13 director of the agency, further evaluation is not appropriate unless the
14 person applies for further care and treatment on a voluntary basis.

15 B. If it is determined on an evaluation of the patient's condition
16 that the patient is, as a result of a mental disorder, a danger to self or to
17 others or has a persistent or acute disability or a grave disability, the
18 medical director in charge of the agency that provided the evaluation, unless
19 the person applies for further care and treatment on a voluntary basis, shall
20 prepare, sign and file a petition for court-ordered treatment unless the
21 county attorney performs the functions of preparing, signing or filing the
22 petition as provided in subsection C of this section.

23 C. The agency may contact the county attorney to obtain assistance in
24 preparing the petition for court-ordered treatment, and the agency may
25 request the advice and judgment of the county attorney in reaching a decision
26 as to whether court-ordered treatment is justified.

27 D. A person being evaluated on an inpatient basis in an evaluation
28 agency shall be released within seventy-two hours, excluding weekends and
29 holidays, from the time that the person is hospitalized pursuant to a court
30 order for evaluation, unless the person applies for further care and
31 treatment on a voluntary basis or unless a petition for court-ordered
32 treatment has been filed pursuant to subsection B of this section.

1 E. IF A PROSECUTOR FILED A PETITION PURSUANT TO SECTION 13-4517, THE
2 MEDICAL DIRECTOR OF AN EVALUATION AGENCY SHALL PROVIDE NOTICE WITHIN
3 TWENTY-FOUR HOURS TO THE COURT AND THE PROSECUTING AGENCY OF THE DIRECTOR'S
4 INTENTION TO RELEASE THE PERSON UNDER THIS SECTION. THE COURT MAY ORDER THE
5 PERSON RETURNED TO CUSTODY FOR A DISPOSITION PURSUANT TO SECTION 13-4517. AT
6 ANY HEARING HELD PURSUANT TO THIS SUBSECTION, THE COURT SHALL ORDER THE
7 MEDICAL DIRECTOR TO PROVIDE THE PATIENT'S RECORDS, INCLUDING MEDICAL AND
8 TREATMENT RECORDS, TO THE COURT AND THE PROSECUTING AGENCY.

9 ~~E.~~ F. The administration may conduct jointly with a school district,
10 directly or indirectly, an educational evaluation pursuant to sections 15-765
11 and 15-766 for nonadjudicated youth. The evaluation information may be
12 shared by and among authorized personnel employed by the administration and
13 the department of education, or authorized personnel from the local education
14 agency, for purposes of ensuring the provision of special education and
15 related services as required by the individuals with disabilities education
16 act (20 United States Code sections 1400 through 1415).

17 Sec. 14. Section 36-533, Arizona Revised Statutes, is amended to read:

18 36-533. Petition for treatment

19 A. The petition for court-ordered treatment shall allege:

20 1. That the patient is in need of a period of treatment because the
21 patient, as a result of mental disorder, is a danger to self or to others,~~—~~
22 OR has a persistent or acute disability or a grave disability.

23 2. The treatment alternatives that are appropriate or available.

24 3. That the patient is unwilling to accept or incapable of accepting
25 treatment voluntarily.

26 B. The petition shall be accompanied by the affidavits of the two
27 physicians who participated in the evaluation and by the affidavit of the
28 applicant for the evaluation, if any. The affidavits of the physicians shall
29 describe in detail the behavior that indicates that the person, as a result
30 of mental disorder, is a danger to self or to others,~~—~~ OR has a persistent or
31 acute disability or a grave disability and shall be based on the physician's
32 observations of the patient and the physician's study of information about

1 the patient. A summary of the facts that support the allegations of the
2 petition shall be included. The affidavit shall also include any of the
3 results of the physical examination of the patient if relevant to the
4 patient's psychiatric condition.

5 C. The petition shall request the court to issue an order requiring
6 the person to undergo a period of treatment. IF PROVIDED BY THE PROSECUTOR
7 PURSUANT TO SECTION 13-4517 THE PETITION SHALL SET FORTH ANY KNOWN CRIMINAL
8 HISTORY OF THE PERSON.

9 D. In cases of grave disability the petition shall also include:

10 1. A statement that in the opinion of the petitioner the person with a
11 grave disability does or does not require guardianship or conservatorship, or
12 both, under title 14 and the reasons on which the statement is based.

13 2. A request that the court order an independent investigation and
14 report for the court if in the opinion of the petitioner the person does
15 require guardianship or conservatorship, or both.

16 3. A statement that in the opinion of the petitioner the person with a
17 grave disability does or does not require temporary guardianship or
18 conservatorship, or both, and the reasons on which the statement is based.

19 4. A request that the court appoint a temporary guardian or
20 conservator, or both, if in the opinion of the petitioner the person does
21 require temporary guardianship or conservatorship, or both.

22 E. A copy of the petition in cases of grave disability shall be mailed
23 to the public fiduciary in the county of the patient's residence or in which
24 the patient was found before evaluation and to any person nominated as
25 guardian or conservator.

26 F. A copy of all petitions shall be mailed to the superintendent of
27 the Arizona state hospital.

28 Sec. 15. Section 36-534, Arizona Revised Statutes, is amended to read:
29 36-534. Change to voluntary status; discharge; notice; hearing

30 A. If, after a petition for court-ordered treatment has been filed and
31 prior to the hearing, the medical director of the agency finds that it is
32 more appropriate to discharge the patient or to admit the proposed patient on

1 a voluntary basis, the medical director ~~shall~~, after receiving approval from
2 the court, **SHALL** either discharge the patient or admit the patient for
3 further treatment on a voluntary basis.

4 **B. IF THE COURT APPROVES ADMITTING A PATIENT FOR WHOM A PETITION HAS**
5 **BEEN FILED BY A PROSECUTOR PURSUANT TO SECTION 13-4517 TO VOLUNTARY TREATMENT**
6 **OR BEFORE A PATIENT IS DISCHARGED PURSUANT TO THIS SECTION, THE MEDICAL**
7 **DIRECTOR SHALL PROVIDE NOTICE TO THE PROSECUTING AGENCY. THE PROSECUTING**
8 **AGENCY MAY REQUEST A HEARING TO DETERMINE WHETHER THE COURT SHOULD ORDER THE**
9 **DEFENDANT RETURNED TO CUSTODY FOR A DISPOSITION PURSUANT TO SECTION 13-4517.**
10 **FOR ANY HEARING HELD PURSUANT TO THIS SUBSECTION, THE COURT SHALL ORDER THE**
11 **MEDICAL DIRECTOR TO PROVIDE THE PATIENT'S RECORDS, INCLUDING MEDICAL AND**
12 **TREATMENT RECORDS, TO THE COURT AND TO THE PROSECUTING AGENCY.**

13 Sec. 16. Section 36-540, Arizona Revised Statutes, is amended to read:

14 **36-540. Court options**

15 A. If the court finds by clear and convincing evidence that the
16 proposed patient, as a result of mental disorder, is a danger to self, is a
17 danger to others, has a persistent or acute disability or a grave disability
18 and **IS** in need of treatment, and is either unwilling or unable to accept
19 voluntary treatment, the court shall order the patient to undergo one of the
20 following:

21 1. Treatment in a program of outpatient treatment.

22 2. Treatment in a program consisting of combined inpatient and
23 outpatient treatment.

24 3. Inpatient treatment in a mental health treatment agency, in a
25 hospital operated by or under contract with the United States department of
26 veterans affairs to provide treatment to eligible veterans pursuant to
27 article 9 of this chapter, in the state hospital or in a private hospital, if
28 the private hospital agrees, subject to the limitations of section 36-541.

29 B. The court shall consider all available and appropriate alternatives
30 for the treatment and care of the patient. The court shall order the least
31 restrictive treatment alternative available.

1 C. The court may order the proposed patient to undergo outpatient or
2 combined inpatient and outpatient treatment pursuant to subsection A,
3 paragraph 1 or 2 of this section if the court:

4 1. Determines that all of the following apply:

5 (a) The patient does not require continuous inpatient hospitalization.

6 (b) The patient will be more appropriately treated in an outpatient
7 treatment program or in a combined inpatient and outpatient treatment
8 program.

9 (c) The patient will follow a prescribed outpatient treatment plan.

10 (d) The patient will not likely become dangerous or suffer more
11 serious physical harm or serious illness or further deterioration if the
12 patient follows a prescribed outpatient treatment plan.

13 2. Is presented with and approves a written treatment plan that
14 conforms with the requirements of section 36-540.01, subsection B. If the
15 treatment plan presented to the court pursuant to this subsection provides
16 for supervision of the patient under court order by a mental health agency
17 that is other than the mental health agency that petitioned or requested the
18 county attorney to petition the court for treatment pursuant to section
19 36-531, the treatment plan must be approved by the medical director of the
20 mental health agency that will supervise the treatment pursuant to subsection
21 E of this section.

22 D. An order to receive treatment pursuant to subsection A, paragraph 1
23 or 2 of this section shall not exceed three hundred sixty-five days. The
24 period of inpatient treatment under a combined treatment order pursuant to
25 subsection A, paragraph 2 of this section shall not exceed the maximum period
26 allowed for an order for inpatient treatment pursuant to subsection F of this
27 section.

28 E. If the court enters an order for treatment pursuant to subsection
29 A, paragraph 1 or 2 of this section, all of the following apply:

30 1. The court shall designate the medical director of the mental health
31 treatment agency that will supervise and administer the patient's treatment
32 program.

1 2. The medical director shall not use the services of any person,
2 agency or organization to supervise a patient's outpatient treatment program
3 unless the person, agency or organization has agreed to provide these
4 services in the individual patient's case and unless the department has
5 determined that the person, agency or organization is capable and competent
6 to do so.

7 3. The person, agency or organization assigned to supervise an
8 outpatient treatment program or the outpatient portion of a combined
9 treatment program shall be notified at least three days before a referral.
10 The medical director making the referral and the person, agency or
11 organization assigned to supervise the treatment program shall share relevant
12 information about the patient to provide continuity of treatment.

13 4. THE COURT MAY ORDER THAT THE MEDICAL DIRECTOR PROVIDE NOTICE TO THE
14 COURT OF ANY NONCOMPLIANCE WITH THE TERMS OF A TREATMENT ORDER.

15 ~~4.~~ 5. During any period of outpatient treatment under subsection A,
16 paragraph 2 of this section, if the court, ON ITS OWN MOTION OR on motion by
17 the medical director of the patient's outpatient mental health treatment
18 facility, determines that the patient is not complying with the terms of the
19 order or that the outpatient treatment plan is no longer appropriate and the
20 patient needs inpatient treatment, the court, without a hearing and based on
21 the court record, the patient's medical record, the affidavits and
22 recommendations of the medical director, and the advice of staff and
23 physicians or the psychiatric and mental health nurse practitioner familiar
24 with the treatment of the patient, may enter an order amending its original
25 order. The amended order may alter the outpatient treatment plan or order
26 the patient to inpatient treatment pursuant to subsection A, paragraph 3 of
27 this section. The amended order shall not increase the total period of
28 commitment originally ordered by the court or, when added to the period of
29 inpatient treatment provided by the original order and any other amended
30 orders, exceed the maximum period allowed for an order for inpatient
31 treatment pursuant to subsection F of this section. If the patient refuses
32 to comply with an amended order for inpatient treatment, the court, ON ITS

OWN MOTION OR ON THE REQUEST OF THE MEDICAL DIRECTOR, may authorize and direct a peace officer, ~~on the request of the medical director,~~ to take the patient into protective custody and transport the patient to the agency for inpatient treatment. ANY AUTHORIZATION, DIRECTIVE OR ORDER ISSUED TO A PEACE OFFICER TO TAKE THE PATIENT INTO PROTECTIVE CUSTODY SHALL INCLUDE THE PATIENT'S CRIMINAL HISTORY AND THE NAME AND TELEPHONE NUMBERS OF THE PATIENT'S CASE MANAGER, GUARDIAN, SPOUSE, NEXT OF KIN OR SIGNIFICANT OTHER, AS APPLICABLE. When reporting to or being returned to a treatment agency for inpatient treatment pursuant to an amended order, the patient shall be informed of the patient's right to judicial review and the patient's right to consult with counsel pursuant to section 36-546.

~~5.~~ 6. During any period of outpatient treatment under subsection A, paragraph 2 of this section, if the medical director of the outpatient treatment facility in charge of the patient's care determines, in concert with the medical director of an inpatient mental health treatment facility who has agreed to accept the patient, that the patient is in need of immediate acute inpatient psychiatric care because of behavior that is dangerous to self or to others, the medical director of the outpatient treatment facility may order a peace officer to apprehend and transport the patient to the inpatient treatment facility pending a court determination on an amended order under paragraph ~~4~~ 5 of this subsection. The patient may be detained and treated at the inpatient treatment facility for a period of no more than forty-eight hours, exclusive of weekends and holidays, from the time that the patient is taken to the inpatient treatment facility. The medical director of the outpatient treatment facility shall file the motion for an amended court order requesting inpatient treatment no later than the next working day following the patient being taken to the inpatient treatment facility. Any period of detention within the inpatient treatment facility pending issuance of an amended order shall not increase the total period of commitment originally ordered by the court or, when added to the period of inpatient treatment provided by the original order and any other amended orders, exceed the maximum period allowed for an order for inpatient

1 treatment pursuant to subsection F of this section. If a patient is ordered
2 to undergo inpatient treatment pursuant to an amended order, the medical
3 director of the outpatient treatment facility shall inform the patient of the
4 patient's right to judicial review and to consult with an attorney pursuant
5 to section 36-546.

6 F. The maximum periods of inpatient treatment that the court may
7 order, subject to the limitations of section 36-541, are as follows:

8 1. Ninety days for a person found to be a danger to self.

9 2. One hundred eighty days for a person found to be a danger to
10 others.

11 3. One hundred eighty days for a person found to have a persistent or
12 acute disability.

13 4. Three hundred sixty-five days for a person found to have a grave
14 disability.

15 G. If, on finding that the patient meets the criteria for
16 court-ordered treatment pursuant to subsection A of this section, the court
17 also finds that there is reasonable cause to believe that the patient is an
18 incapacitated person as defined in section 14-5101 or is a person in need of
19 protection pursuant to section 14-5401 and that the patient is or may be in
20 need of guardianship or conservatorship, or both, the court may order an
21 investigation concerning the need for a guardian or conservator, or both, and
22 may appoint a suitable person or agency to conduct the investigation. The
23 appointee may include a court appointed guardian ad litem, an investigator
24 appointed pursuant to section 14-5308 or the public fiduciary if there is no
25 person willing and qualified to act in that capacity. The court shall give
26 notice of the appointment to the appointee within three days of the
27 appointment. The appointee shall submit the report of the investigation to
28 the court within twenty-one days. The report shall include recommendations
29 as to who should be guardian or who should be conservator, or both, and a
30 report of the findings and reasons for the recommendation. If the
31 investigation and report so indicate, the court shall order the appropriate

1 person to submit a petition to become the guardian or conservator, or both,
2 of the patient.

3 H. In any proceeding for court-ordered treatment in which the petition
4 alleges that the patient is in need of a guardian or conservator and states
5 the grounds for that allegation, the court may appoint an emergency temporary
6 guardian or conservator, or both, for a specific purpose or purposes
7 identified in its order and for a specific period of time not to exceed
8 thirty days if the court finds that all of the following are true:

9 1. The patient meets the criteria for court-ordered treatment pursuant
10 to subsection A of this section.

11 2. There is reasonable cause to believe that the patient is an
12 incapacitated person as defined in section 14-5101 or is in need of
13 protection pursuant to section 14-5401, paragraph 2.

14 3. The patient does not have a guardian or conservator and the welfare
15 of the patient requires immediate action to protect the patient or the ward's
16 property.

17 4. The conditions prescribed pursuant to section 14-5310, subsection B
18 or section 14-5401.01, subsection B have been met.

19 I. The court may appoint as a temporary guardian or conservator
20 pursuant to subsection H of this section a suitable person or the public
21 fiduciary if there is no person qualified and willing to act in that
22 capacity. The court shall issue an order for an investigation as prescribed
23 pursuant to subsection G of this section and, unless the patient is
24 represented by independent counsel, the court shall appoint an attorney to
25 represent the patient in further proceedings regarding the appointment of a
26 guardian or conservator. The court shall schedule a further hearing within
27 fourteen days on the appropriate court calendar of a court that has authority
28 over guardianship or conservatorship matters pursuant to this title to
29 consider the continued need for an emergency temporary guardian or
30 conservator and the appropriateness of the temporary guardian or conservator
31 appointed, and shall order the appointed guardian or conservator to give
32 notice to persons entitled to notice pursuant to section 14-5309, subsection

1 A or section 14-5405, subsection A. The court shall authorize certified
2 letters of temporary emergency guardianship or conservatorship to be issued
3 on presentation of a copy of the court's order. If a temporary emergency
4 conservator other than the public fiduciary is appointed pursuant to this
5 subsection, the court shall order that the use of the money and property of
6 the patient by the conservator is restricted and not to be sold, used,
7 transferred or encumbered, except that the court may authorize the
8 conservator to use money or property of the patient specifically identified
9 as needed to pay an expense to provide for the care, treatment or welfare of
10 the patient pending further hearing. This subsection and subsection H of
11 this section do not:

12 1. Prevent the evaluation or treatment agency from seeking
13 guardianship and conservatorship in any other manner allowed by law at any
14 time during the period of court-ordered evaluation and treatment.

15 2. Relieve the evaluation or treatment agency from its obligations
16 concerning the suspected abuse of a vulnerable adult pursuant to title 46,
17 chapter 4.

18 J. If, on finding that a patient meets the criteria for court-ordered
19 treatment pursuant to subsection A of this section, the court also learns
20 that the patient has a guardian appointed under title 14, the court with
21 notice may impose on the existing guardian additional duties pursuant to
22 section 14-5312.01. If the court imposes additional duties on an existing
23 guardian as prescribed in this subsection, the court may determine that the
24 patient needs to continue treatment under a court order for treatment and may
25 issue the order or determine that the patient's needs can be adequately met
26 by the guardian with the additional duties pursuant to section 14-5312.01 and
27 decline to issue the court order for treatment. If at any time after the
28 issuance of a court order for treatment the court finds that the patient's
29 needs can be adequately met by the guardian with the additional duties
30 pursuant to section 14-5312.01 and that a court order for treatment is no
31 longer necessary to assure compliance with necessary treatment, the court may
32 terminate the court order for treatment. If there is a court order for

1 treatment and a guardianship with additional mental health authority pursuant
2 to section 14-5312.01 existing at the same time, the treatment and placement
3 decisions made by the treatment agency assigned by the court to supervise and
4 administer the patient's treatment program pursuant to the court order for
5 treatment are controlling unless the court orders otherwise.

6 K. The court shall file a report as part of the court record on its
7 findings of alternatives for treatment.

8 L. Treatment shall not include psychosurgery, lobotomy or any other
9 brain surgery without specific informed consent of the patient or the
10 patient's legal guardian and an order of the superior court in the county in
11 which the treatment is proposed, approving with specificity the use of the
12 treatment.

13 M. The medical director or any person, agency or organization used by
14 the medical director to supervise the terms of an outpatient treatment plan
15 is not civilly liable for any acts committed by a patient while on outpatient
16 treatment if the medical director, person, agency or organization has in good
17 faith followed the requirements of this section.

18 N. A peace officer who in good faith apprehends and transports a
19 patient to an inpatient treatment facility on the order of the medical
20 director of the outpatient treatment facility pursuant to subsection E,
21 paragraph ~~5~~ 6 of this section is not subject to civil liability.

22 O. If a person has been found, as a result of a mental disorder, to
23 constitute a danger to self or others or to have a persistent or acute
24 disability or a grave disability and the court enters an order for treatment
25 pursuant to subsection A of this section, the court shall transmit the
26 person's name, sex, date of birth, social security number, if available, and
27 date of the order for treatment to the supreme court. The supreme court
28 shall transmit the information to the department of public safety to comply
29 with the requirements of title 13, chapter 31 and title 32, chapter 26. The
30 department of public safety shall transmit the information to the national
31 instant criminal background check system. The superior court may access the

1 information of a person who is ordered into treatment to enforce or
2 facilitate a treatment order.

3 P. On request, the clerk of the court shall provide certified copies
4 of the commitment order to a law enforcement or prosecuting agency that is
5 investigating or prosecuting a prohibited possessor as defined in section
6 13-3101.

7 Q. IF THE COURT DOES NOT FIND A PERSON TO BE IN NEED OF TREATMENT AND
8 A PROSECUTOR FILED A PETITION PURSUANT TO SECTION 13-4517, THE COURT SHALL
9 NOTIFY THE PROSECUTING AGENCY OF ITS FINDING. THE PERSON SHALL BE REMANDED
10 TO THE CUSTODY OF THE SHERIFF FOR FURTHER DISPOSITION PURSUANT TO SECTION
11 13-4517.

12 Sec. 17. Section 36-540.01, Arizona Revised Statutes, is amended to
13 read:

14 36-540.01. Conditional outpatient treatment

15 A. The medical director may issue an order for conditional outpatient
16 treatment for a patient ordered to undergo treatment pursuant to section
17 36-540 if, after consultation with staff familiar with the patient's case
18 history, the medical director determines with a reasonable degree of medical
19 probability that all of the following apply:

20 1. The patient no longer requires continuous inpatient
21 hospitalization.

22 2. The patient will be more appropriately treated in an outpatient
23 treatment program.

24 3. The patient will follow a prescribed outpatient treatment plan.

25 4. The patient will not likely become dangerous, suffer more serious
26 physical harm or serious illness or further deteriorate if the patient
27 follows a prescribed outpatient treatment plan.

28 B. The order for conditional outpatient treatment issued by the
29 medical director shall include a written outpatient treatment plan prepared
30 by staff familiar with the patient's case history and approved by the medical
31 director. The plan shall include all of the following:

1 1. A statement of the patient's requirements, if any, for supervision,
2 medication and assistance in obtaining basic needs such as employment, food,
3 clothing or shelter.

4 2. The address of the residence where the patient is to live and the
5 name of the person in charge of the residence, if any.

6 3. The name and address of any person, agency or organization assigned
7 to supervise an outpatient treatment plan or care for the patient, and the
8 extent of authority of the person, agency or organization in carrying out the
9 terms of the plan.

10 4. The conditions for continued outpatient treatment, which may
11 require periodic reporting, continuation of medication and submission to
12 testing, and may restrict travel, consumption of spirituous liquor and drugs,
13 associations with others and incurrence of debts and obligations or such
14 other reasonable conditions as the medical director may specify.

15 5. ANY OTHER PROVISIONS THAT THE MEDICAL DIRECTOR OR THE COURT
16 BELIEVES ARE NECESSARY TO PROTECT THE WELL-BEING OF THE PATIENT AND THE
17 PUBLIC.

18 C. THE COURT MAY ORDER THAT THE MEDICAL DIRECTOR PROVIDE NOTICE TO THE
19 COURT OF SPECIFIC INSTANCES OF NONCOMPLIANCE AS SPECIFIED BY THE COURT.

20 ~~E.~~ D. Before release for conditional outpatient treatment, the
21 patient shall be provided with copies and full explanations of the medical
22 director's order and the treatment plan. If, after full explanation, the
23 patient objects to the plan or any part of it, the objection and reasons for
24 the objection shall be noted in the patient's record. The medical director's
25 order and treatment plan shall be filed in the patient's medical file and
26 shall also be filed with the court.

27 ~~D.~~ E. The period for which conditional outpatient treatment may be
28 ordered may not exceed the remainder of the period of court ordered
29 treatment.

30 ~~E.~~ F. Before the release of a patient for outpatient treatment, the
31 medical director shall give notice pursuant to section 36-541.01, subsection
32 ~~B- C~~ and a motion for a determination by the court as to whether the standard

1 for conditional release of the patient has been met may be made by the
2 persons and in the manner provided for in section 36-541.01, subsection ~~H~~ I.
3 Before the release of a person found to be a danger to self, ~~OR OTHERS OR~~
4 ~~FOUND to be a person with~~ HAVE a persistent or acute disability or a grave
5 disability for outpatient treatment, the medical director shall give notice
6 to the court that ordered the patient to undergo treatment. If criminal
7 charges against a patient involving death or serious physical injury or a
8 violation of title 13, chapter 14 are dismissed pursuant to section 13-4517,
9 the medical director shall notify the prosecuting agency if a civil
10 commitment order issued pursuant to this chapter expires or is terminated, or
11 if the patient is discharged to outpatient treatment. The medical director
12 shall provide this notice by mail at least five days before the anticipated
13 date of the expiration, termination or discharge.

14 ~~F~~ G. The medical director shall require periodic reports concerning
15 the condition of patients on conditional outpatient treatment from any
16 person, agency or organization assigned to supervise an outpatient treatment
17 plan. The medical director shall require these reports at intervals not to
18 exceed thirty days.

19 ~~G~~ H. The medical director shall review the condition of a patient on
20 conditional outpatient treatment at least once every thirty days and enter
21 the findings in writing in the patient's file. In conducting the review, the
22 medical director shall consider all reports and information received and may
23 require the patient to report for further evaluation.

24 ~~H~~ I. The medical director may amend any part of the outpatient
25 treatment plan during the course of conditional outpatient treatment. If the
26 plan is amended, the medical director shall issue a new order including the
27 amended outpatient treatment plan. The new order and amended outpatient
28 treatment plan shall be filed in the patient's medical file. Copies of the
29 new order and outpatient treatment plan shall be immediately provided to the
30 patient and to any person, agency or organization assigned to supervise an
31 outpatient treatment plan. Copies of the new order and outpatient treatment

1 plan shall be immediately filed with the court AND, IF A PROSECUTOR FILED A
2 PETITION PURSUANT TO SECTION 13-4517, WITH THE PROSECUTING AGENCY.

3 ~~I.~~ J. The medical director may rescind an order for conditional
4 outpatient treatment and order the patient to return to a mental health
5 treatment agency at any time during the period of court ordered treatment if,
6 in the medical director's judgment, the patient has failed to comply with a
7 term of the outpatient treatment plan or if, for any reason, the medical
8 director determines that the patient needs inpatient treatment or that
9 conditional outpatient treatment is no longer appropriate. THE MEDICAL
10 DIRECTOR SHALL GIVE NOTICE TO THE COURT THAT ISSUED THE TREATMENT ORDER AND
11 THE PROSECUTING AGENCY IF A PROSECUTOR FILED A PETITION PURSUANT TO SECTION
12 13-4517.

13 ~~J.~~ K. If the medical director rescinds an order for conditional
14 outpatient treatment and the patient is returned to a mental health treatment
15 agency for inpatient treatment, the patient shall be informed of the
16 patient's right to judicial review and right to consult with counsel pursuant
17 to section 36-546.

18 ~~K.~~ L. If the medical director rescinds an order for conditional
19 outpatient treatment and orders the patient to return to a mental health
20 treatment agency, the medical director may request, OR A COURT MAY ORDER, a
21 peace officer or a designated officer or employee of the treatment agency to
22 take the patient into custody for immediate delivery to the agency pursuant
23 to section 36-544.

24 ~~L.~~ M. The medical director is not civilly liable for any act
25 committed by a patient while on conditional outpatient treatment if the
26 medical director has in good faith followed the requirements of this section.

27 ~~M.~~ N. This section does not prevent the medical director from
28 authorizing a patient ordered to undergo treatment pursuant to section 36-540
29 as a danger to self, OR a danger to others, OR a patient with a persistent
30 or acute disability or a grave disability to leave the treatment agency for
31 periods of no more than five days under the care, custody and control of a
32 spouse, relative or other responsible person if the medical director

determines that the patient will not become dangerous or suffer serious physical harm or illness during that time.

~~A.~~ 0. The medical director may authorize a patient who is civilly committed pursuant to section 36-540 to leave the state hospital grounds unaccompanied if the leave is part of an inpatient individualized treatment and discharge plan and the medical director determines that the patient will not become dangerous or suffer serious physical harm or illness during that time.

Sec. 18. Section 36-541.01, Arizona Revised Statutes, is amended to read:

36-541.01. Release or discharge from treatment before expiration of period ordered by court; notification of intent to release or discharge; hearing

A. A PATIENT WHO IS FOUND TO HAVE A GRAVE DISABILITY OR A PERSISTENT OR ACUTE DISABILITY AND ORDERED TO UNDERGO TREATMENT PURSUANT TO THIS ARTICLE MAY BE RELEASED FROM INPATIENT TREATMENT WHEN, IN THE OPINION OF THE MEDICAL DIRECTOR OF THE MENTAL HEALTH TREATMENT AGENCY, THE LEVEL OF CARE OFFERED BY THE AGENCY IS NO LONGER REQUIRED. THE PATIENT MAY AGREE TO CONTINUE TREATMENT VOLUNTARILY. IF THE PATIENT IS TO BE RELEASED, THE MEDICAL DIRECTOR SHALL ARRANGE FOR AN APPROPRIATE ALTERNATIVE PLACEMENT. IF THE PATIENT WHO IS TO BE RELEASED FROM INPATIENT TREATMENT IS UNDER A GUARDIANSHIP, THE MEDICAL DIRECTOR OF THE MENTAL HEALTH TREATMENT AGENCY SHALL NOTIFY THE GUARDIAN AND ANY RELEVANT REGIONAL BEHAVIORAL HEALTH AUTHORITY TEN DAYS BEFORE THE INTENDED RELEASE DATE THAT THE PATIENT NO LONGER REQUIRES THE LEVEL OF CARE THAT IS OFFERED BY THE AGENCY. THE GUARDIAN AND, IF RELEVANT, THE REGIONAL BEHAVIORAL HEALTH AUTHORITY SHALL ARRANGE ALTERNATIVE PLACEMENT WITH THE ADVICE AND RECOMMENDATIONS OF THE MEDICAL DIRECTOR OF THE MENTAL HEALTH TREATMENT AGENCY.

~~A.~~ B. A patient who is ordered to undergo treatment pursuant to this article may be released from treatment before the expiration of the period ordered by the court if, in the opinion of the medical director of the mental health treatment agency, the patient no longer is, as a result of a mental

1 disorder, a danger to others or a danger to self or no longer has a
2 persistent or acute disability or a grave disability. A person who is
3 ordered to undergo treatment as a danger to others **OR WHO HAS HAD A PETITION**
4 **FILED BY A PROSECUTOR PURSUANT TO SECTION 13-4517** may not be released or
5 discharged from treatment before the expiration of the period for treatment
6 ordered by the court unless the medical director first gives notice of
7 intention to do so as provided by this section.

8 ~~B.~~ **C.** Before the release or discharge of a patient who is ordered to
9 undergo treatment, the medical director of the mental health treatment agency
10 shall notify the following of the medical director's intention to release or
11 discharge the patient:

12 1. The presiding judge of the court that entered the order for
13 treatment.

14 2. Any relative or victim of the patient who has filed a demand for
15 notice with the treatment agency.

16 3. Any person found by the court to have a legitimate reason for
17 receiving notice.

18 ~~G.~~ **D.** If ~~criminal charges against a patient involving death or~~
19 ~~serious physical injury or a violation of title 13, chapter 14 are dismissed~~
20 **THE PATIENT IS UNDERGOING COURT ORDERED TREATMENT AS THE RESULT OF A PETITION**
21 **FILED BY A PROSECUTING AGENCY** pursuant to section 13-4517, the medical
22 director shall notify the **COURT AND THE** prosecuting agency if a civil
23 commitment order issued pursuant to this chapter expires or is terminated, or
24 if the patient is discharged to outpatient treatment. The medical director
25 shall provide this notice by mail at least five days before the anticipated
26 date of the expiration, termination or discharge.

27 ~~D.~~ **E.** If the director of the mental health treatment agency is unable
28 to determine, based on the information submitted pursuant to subsection ~~E~~ **F**
29 of this section, that a person who has filed a demand for notice is a victim,
30 the director shall inform that person that that person's demand for notice is
31 denied and that notice will not be given unless ordered by the court pursuant
32 to subsection ~~F~~ **G** of this section.

1 ~~F.~~ F. A demand for notice by a relative or victim, and a petition for
2 notice by other persons, shall be on a form prescribed by the administration
3 and shall include the following information:

- 4 1. The full name of the person to receive notice.
- 5 2. The address to which notice is to be mailed.
- 6 3. The telephone number of the person to receive notice.
- 7 4. The relationship to the patient, if any, or the reasons why the
8 person believes the person has a legitimate reason to receive notice.
- 9 5. A statement that the person will advise the treatment agency in
10 writing by certified mail, return receipt requested, of any change in the
11 address to which notice is to be mailed.
- 12 6. The full name of the patient ordered to undergo treatment as a
13 danger to others OR WHO HAS HAD A PETITION FILED BY A PROSECUTOR PURSUANT TO
14 SECTION 13-4517.
- 15 7. The mental health number assigned to the case by the superior
16 court.

17 ~~F.~~ G. If the court receives a demand for notice by a relative or
18 victim, the court shall order the medical director of the mental health
19 treatment agency not to release or discharge the patient before the
20 expiration of the period of court-ordered treatment without first giving
21 notice to the relative or victim as provided in subsection ~~G~~ H of this
22 section. After considering a petition for notice, if the court finds that
23 the petitioner has a legitimate reason for receiving prior notice, the court
24 may order the medical director of the mental health treatment agency not to
25 release or discharge the patient from inpatient treatment before the
26 expiration of the period of court-ordered treatment without first giving
27 notice to the petitioner as provided in subsection ~~G~~ H of this section. Any
28 order for notice shall be delivered to the mental health treatment agency and
29 shall be filed with the patient's clinical record. If the patient is
30 transferred to another agency or institution, any orders for notice shall be
31 transferred with the patient.

1 ~~G~~. H. A notice of intention to release or discharge shall include the
2 following information:

3 1. The name of the patient to be released or discharged.

4 2. The type of release or discharge.

5 3. The date of anticipated release or discharge. Notices shall be
6 placed in the mail, postage prepaid and addressed to the court and to each
7 person for whom notice has been ordered, at least ten days before the date of
8 intended release or discharge, except that notice shall be sent to the
9 prosecuting agency at least five days before the date of intended release or
10 discharge. For purposes of computing the notice requirement, the day of
11 mailing shall not be counted.

12 ~~H~~. I. Any person for whom prior notice is required pursuant to this
13 section, or the court, may make a motion within the notification period that
14 requires the court to determine whether the standard for release of the
15 patient before the expiration of the period for court-ordered treatment has
16 been met. A determination that the standard for release has been met may be
17 made by the court based on a review of the record and any affidavits
18 submitted without further hearing. For good cause, the court may order an
19 evidentiary hearing. Whether or not a hearing is held, the court shall make
20 a determination at the earliest possible time but no longer than three weeks
21 after the anticipated date of release pursuant to subsection ~~G~~ H of this
22 section, and the patient shall be retained for the additional time required
23 for the court's determination. In making its determination the court may
24 order an independent examination of the patient. If a motion is not made,
25 the patient may be released in accordance with the terms set forth in the
26 notice without further court order. IF A HEARING IS HELD PURSUANT TO THIS
27 SUBSECTION, THE COURT SHALL ORDER THE MEDICAL DIRECTOR TO PROVIDE THE
28 PATIENT'S RECORDS, INCLUDING MEDICAL AND TREATMENT RECORDS, TO THE COURT AND
29 THE PROSECUTING AGENCY.

30 ~~I~~. J. If a motion has not been made pursuant to subsection ~~H~~ I of
31 this section, the patient may be released or discharged and the medical
32 director of the mental health treatment agency shall send to the court a

1 certificate that the patient is no longer a danger to others or a danger to
2 self or no longer has a persistent or acute disability or a grave disability
3 as the result of a mental disorder and therefore is released before the
4 expiration of the period ordered for treatment. The court shall enter an
5 order terminating the patient's court-ordered treatment.

6 ~~K.~~ K. The medical director of the mental health treatment agency
7 shall not be held civilly liable for any acts committed by a patient who is
8 released before the expiration of the period of court-ordered treatment if
9 the medical director has in good faith followed the requirements of this
10 section.

11 Sec. 19. Section 36-542, Arizona Revised Statutes, is amended to read:

12 36-542. Discharge of patient at expiration of period ordered by
13 court; change to voluntary status; relief from civil
14 liability

15 A. A patient ordered by a court to undergo treatment pursuant to this
16 article shall be discharged from treatment at the expiration of the period of
17 treatment ordered unless one of the following occurs:

18 1. The person accepts voluntary treatment at the mental health
19 treatment agency.

20 2. Before the discharge date, a new petition is filed in the county in
21 which the patient is being treated. The proceedings shall then be governed
22 by this article. The costs of the proceedings shall be a charge against the
23 county in which the patient resided or was found prior to hospitalization.

24 3. AN APPLICATION FOR CONTINUED COURT ORDERED TREATMENT IS GRANTED
25 PURSUANT TO SECTION 36-543.

26 B. If a patient to be discharged is under guardianship, the medical
27 director of the mental health treatment agency shall notify the guardian ten
28 days before discharge.

29 C. IF A PATIENT TO BE DISCHARGED IS UNDERGOING COURT ORDERED TREATMENT
30 AS A RESULT OF A PETITION FILED BY A PROSECUTOR PURSUANT TO SECTION 13-4517
31 AND THE PATIENT IS BEING DISCHARGED BECAUSE THE MEDICAL DIRECTOR HAS DECIDED
32 NOT TO FILE A NEW PETITION FOR COURT ORDERED EVALUATION OR TREATMENT OR HAS

1 DECIDED NOT TO REQUEST THE COURT TO ORDER THAT THE PREVIOUS ORDER FOR
2 TREATMENT BE CONTINUED, THE PATIENT MAY NOT BE DISCHARGED OR RELEASED FROM
3 TREATMENT BEFORE THE PATIENT COMPLIES WITH THE PROVISIONS OF SECTION
4 36-541.01.

5 ~~E.~~ D. The medical director is not civilly liable for any acts
6 committed by a RELEASED OR discharged patient if the medical director has in
7 good faith followed the requirements of this article.

8 Sec. 20. Section 36-543, Arizona Revised Statutes, is amended to read:

9 36-543. Annual review of a patient with a grave disability or a
10 persistent or acute disability; notice; court order
11 for continued treatment; rules

12 ~~A. A patient who is found to have a grave disability or a persistent~~
13 ~~or acute disability and ordered to undergo treatment may be released from~~
14 ~~inpatient treatment when, in the opinion of the medical director of the~~
15 ~~mental health treatment agency, the level of care offered by the agency is no~~
16 ~~longer required. The patient may agree to continue treatment voluntarily.~~
17 ~~If the patient is to be released, the medical director shall arrange for an~~
18 ~~appropriate alternative placement.~~

19 ~~B. If a patient who is to be released from inpatient treatment is~~
20 ~~under guardianship, the medical director of the mental health treatment~~
21 ~~agency shall notify the guardian and any relevant regional behavioral health~~
22 ~~authority ten days before the intended release date that the ward no longer~~
23 ~~requires the level of care offered by the agency. The guardian and, if~~
24 ~~relevant, the regional behavioral health authority shall arrange alternative~~
25 ~~placement with the advice and recommendations of the medical director of the~~
26 ~~mental health treatment agency.~~

27 ~~C. The medical director of the mental health treatment agency is not~~
28 ~~civilly liable for any acts committed by the released patient if the medical~~
29 ~~director has in good faith complied with the requirements of this article.~~

30 ~~D.~~ A. Within ninety days before the expiration of a court order for
31 treatment, the medical director of the mental health treatment agency shall
32 conduct an annual review of a patient who has been found to have a grave

1 disability or a persistent or acute disability and is undergoing
2 court-ordered treatment to determine whether the continuation of
3 court-ordered treatment is appropriate and to assess the needs of the patient
4 for guardianship or conservatorship, or both. The annual review shall
5 consist of the mental health treatment and clinical records contained in the
6 patient's treatment file. The mental health treatment agency shall keep a
7 record of the annual review. If the medical director believes that a
8 continuation of court-ordered treatment is appropriate, the medical director
9 of the mental health treatment agency shall appoint one or more psychiatrists
10 to carry out a psychiatric examination of the patient. In any proceeding
11 conducted pursuant to this section, a patient has the right to have an
12 analysis of the patient's mental condition by an independent evaluation
13 pursuant to section 36-538.

14 ~~E.~~ B. Each examiner participating in the psychiatric examination of
15 the patient shall submit a report to the medical director of the mental
16 health treatment agency that includes the following:

17 1. The examiner's opinions as to whether the patient continues to have
18 a grave disability or a persistent or acute disability as the result of a
19 mental disorder and be in need of continued court-ordered treatment. In
20 evaluating the patient's need for continued court-ordered treatment, the
21 examiner must consider, along with all other evidence, the patient's history
22 before and during the current period of court-ordered treatment, the
23 patient's compliance with recommended treatment and any other evidence
24 relevant to the patient's ability and willingness to follow recommended
25 treatment with or without a court order.

26 2. A statement as to whether suitable alternatives to court-ordered
27 treatment are available.

28 3. A statement as to whether voluntary treatment would be appropriate.

29 4. A review of the patient's status as to guardianship or
30 conservatorship, or both, the adequacy of existing protections of the patient
31 and the continued need for guardianship or conservatorship, or both. If the
32 examiner concludes that the patient's needs in these areas are not being

1 adequately met, the examiner's report shall recommend that the court order an
2 investigation into the patient's needs.

3 5. If the patient has an existing guardian who does not have the
4 mental health powers authorized pursuant to section 14-5312.01, a
5 recommendation as to whether the additional mental health powers authorized
6 by section 14-5312.01 should be imposed on the existing guardian and whether
7 the patient's needs can be adequately addressed by a guardian with mental
8 health powers without the need for a court order for treatment or whether the
9 court order for treatment should continue regardless of the additional mental
10 health powers imposed on the guardian.

11 6. The results of any physical examination conducted during the period
12 of court-ordered treatment if relevant to the psychiatric condition of the
13 patient.

14 ~~F.~~ C. After conducting the annual review as prescribed in this
15 section, if the medical director believes that continued court-ordered
16 treatment is necessary or appropriate, not later than thirty days before the
17 expiration of the court order for treatment, the medical director shall file
18 with the court an application for continued court-ordered treatment alleging
19 the basis for the application and shall file simultaneously with the
20 application any psychiatric examination conducted as part of the annual
21 review. If the patient is under guardianship, the medical director shall
22 mail a copy of the application to the patient's guardian.

23 ~~G.~~ D. If an application for continued court-ordered treatment is
24 filed, all of the following apply:

25 1. If the patient does not have an attorney, the court shall appoint
26 an attorney to represent the patient.

27 2. Within ten days after appointment, an attorney appointed pursuant
28 to this subsection, to the extent possible, shall fulfill the duties imposed
29 pursuant to section 36-537, review the medical director's report and the
30 patient's medical records, interview any physician who prepared a report on
31 the annual review and file a response requesting a hearing or submitting the
32 matter to the court for a ruling based on the record without a hearing.

1 3. If a hearing is not requested, the court shall rule on the
2 application or set the matter for hearing. If a hearing is requested, the
3 hearing shall be held within three weeks after the request for hearing is
4 filed. The hearing may be continued for good cause on motion of a party or
5 on the court's own motion, and the expiration of the current court order for
6 treatment may be extended until a ruling by the court on an application filed
7 pursuant to this subsection.

8 4. The patient's attorney must be present at all hearings and may
9 subpoena and cross-examine witnesses and present evidence. The patient has
10 the right to attend all hearings, but may choose not to attend a hearing.
11 The patient's attorney may waive the patient's presence after speaking with
12 the patient and confirming that the patient understands the right to be
13 present and does not desire to attend. If the patient is unable to be
14 present at the hearing for medical or psychiatric reasons and the hearing
15 cannot be conducted where the patient is being treated or confined, or the
16 patient cannot appear by another reasonably feasible means, the court shall
17 require clear and convincing evidence that the patient is unable to be
18 present at the hearing and on such a finding may proceed with the hearing in
19 the patient's absence.

20 5. The evidence presented by the applicant includes the testimony of
21 one or more witnesses acquainted with the patient during the period of
22 court-ordered treatment, which may be satisfied by a statement agreed on by
23 the parties, and the testimony of any physician who performed an annual
24 review of the patient, which may be satisfied by stipulating to the admission
25 of the examining physicians' written report prepared pursuant ~~T0~~ subsection
26 ~~E~~ B of this section. The court may waive the need for the applicant to
27 present the testimony of witnesses acquainted with the patient as required by
28 this subsection, if it finds that the need for a continued court order for
29 treatment has been established by clear and convincing evidence from the
30 other testimony and evidence presented at the hearing.

31 6. At a hearing held pursuant to this subsection, the court, with
32 notice, may impose on an existing guardian additional powers pursuant to

1 section 14-5312.01. If the court finds that the patient's needs can be
2 adequately met by an existing guardian with the additional powers pursuant to
3 section 14-5312.01 and that a court order for treatment is not necessary to
4 ensure compliance with necessary treatment, the court may terminate the court
5 order for treatment or decline to issue an order continuing court-ordered
6 treatment. The court may also order an investigation into the need for
7 guardianship or conservatorship, or both, and may appoint a suitable person
8 or agency to conduct the investigation. The appointee may include a
9 court-appointed guardian ad litem, a court-appointed investigator pursuant to
10 section 14-5308 or the public fiduciary if there is no person willing and
11 qualified to act in that capacity. The court shall give notice of the
12 appointment to the appointee within three days after the appointment. The
13 appointee shall submit the report of the investigation to the court within
14 twenty-one days. The report shall include recommendations as to who should
15 be guardian or conservator, or both, and the findings and reasons for the
16 recommendation. If the investigation and report so indicate, the court may
17 authorize an appropriate person to file a petition for appointment of a
18 guardian or conservator for the patient.

19 ~~H.~~ E. If a hearing is held pursuant to subsection ~~G~~ D of this
20 section, the party seeking the renewal of the court order must prove all of
21 the following by clear and convincing evidence:

22 1. The patient continues to have a mental disorder and, as a result of
23 that disorder, has either a persistent or acute disability or a grave
24 disability.

25 2. The patient is in need of continued court-ordered treatment.

26 3. The patient is either unwilling or unable to accept treatment
27 voluntarily.

28 ~~I.~~ F. After a hearing held pursuant to subsection ~~G~~ D of this
29 section, the court may order the patient to be released from court-ordered
30 treatment or to undergo continued court-ordered treatment for a period not to
31 exceed the time periods prescribed in section 36-540, subsection D.

1 ~~H.~~ G. The director shall create and operate a program to ensure that
2 the examination and review of persons with grave disabilities or persistent
3 or acute disabilities under court order are carried out in an effective and
4 timely manner. The director shall adopt rules needed to operate this
5 program.

6 H. THE MEDICAL DIRECTOR OF THE MENTAL HEALTH TREATMENT AGENCY IS NOT
7 CIVILLY LIABLE FOR ANY ACTS COMMITTED BY THE RELEASED PATIENT IF THE MEDICAL
8 DIRECTOR HAS IN GOOD FAITH COMPLIED WITH THE REQUIREMENTS OF THIS ARTICLE.

9 Sec. 21. Section 36-544, Arizona Revised Statutes, is amended to read:

10 36-544. Unauthorized absences; violation; classification;
11 tolling period; hearing; civil liability; definition

12 A. When any patient who is being evaluated or treated is absent
13 without proper authorization from an evaluation agency or a mental health
14 treatment agency, or when an order for outpatient treatment is rescinded, any
15 peace officer shall, upon oral or written request of the medical director of
16 the agency and without the necessity of a warrant or court order, or any
17 officer or employee of the agency who has been previously designated in
18 writing by the medical director of the agency to perform such duties may,
19 take into custody and deliver such patient to the agency. Such officers and
20 employees of the agency have the powers and duties of peace officers so far
21 as is necessary to carry out the provisions of this section. IF NECESSARY,
22 THE EVALUATION OR TREATMENT AGENCY MAY APPLY TO THE COURT FOR A WARRANT OR
23 COURT ORDER DIRECTING ANY PEACE OFFICER TO TAKE A PATIENT WHO IS ABSENT
24 WITHOUT PROPER AUTHORIZATION INTO CUSTODY AND DELIVER THE PATIENT TO THE
25 AGENCY.

26 B. Any person who intentionally assists any patient being evaluated or
27 treated in an agency to be absent from the agency without proper
28 authorization, or who intentionally assists a patient whom he knows to be
29 absent without proper authorization or whom he knows to be a patient whose
30 order for outpatient treatment has been rescinded and who has been ordered to
31 return to the agency, or to resist being returned to the agency after such
32 absence is guilty of a class 2 misdemeanor.

1 C. IF CONFIRMED IN A COURT ORDER THAT IS ISSUED PURSUANT TO THIS
2 SECTION, the period of court-ordered treatment ceases to run during the
3 unauthorized absence of the patient ~~from the jurisdiction or from any~~
4 ~~required supervision~~ and resumes running only on the patient's voluntary or
5 involuntary return to ~~the~~ treatment agency. THE COURT SHALL CONFIRM THE
6 TOLLING AND THE RESUMPTION OF THE RUNNING OF THE PERIOD OF COURT-ORDERED
7 TREATMENT IN AN ORDER ISSUED BY THE COURT AFTER A PETITION IS FILED BY THE
8 TREATMENT AGENCY. NOTICE OF THE PETITION AND THE OPPORTUNITY TO APPEAR SHALL
9 BE PROVIDED TO THE PATIENT BY REGULAR MAIL AT THE PATIENT'S LAST KNOWN
10 ADDRESS. IF THE PATIENT IS UNDERGOING TREATMENT AS A RESULT OF A REMAND
11 PURSUANT TO SECTION 13-4517, NOTICE OF THE PETITION SHALL BE PROVIDED TO THE
12 PROSECUTING AGENCY.

13 ~~D. A patient who remains on unauthorized absence status continuously~~
14 ~~for at least ninety days may petition the court on his return to the~~
15 ~~treatment agency for a hearing to determine his current mental status and his~~
16 ~~present need for treatment. The court shall order a hearing if requested by~~
17 ~~the patient, his legal guardian or an interested party. The hearing shall be~~
18 ~~held within seventy-two hours after the request.~~

19 ~~E. Subsections C and D of this section shall apply only to inpatient~~
20 ~~treatment pursuant to section 36-540, subsection A, paragraphs 2 and 3.~~

21 D. A PATIENT WHOSE PERIOD OF COURT ORDERED TREATMENT IS TOLLED FOR A
22 PERIOD OF AT LEAST SIXTY CONTINUOUS DAYS MAY REQUEST A JUDICIAL REVIEW
23 PURSUANT TO SECTION 36-546 ON THE PATIENT'S VOLUNTARY OR INVOLUNTARY RETURN
24 TO TREATMENT. DURING THE PERIOD TOLLED BY A COURT ORDER ISSUED PURSUANT TO
25 THIS SECTION, THE TREATMENT AGENCY SHALL MAKE ACTIVE AND DILIGENT EFFORTS TO
26 FIND AND RETURN THE PATIENT TO APPROPRIATE TREATMENT AND AT LEAST ONCE EVERY
27 SIXTY DAYS, OR AS OFTEN AS OTHERWISE ORDERED BY THE COURT, SHALL FILE A
28 REPORT OF THE AGENCY'S EFFORTS WITH THE COURT. AFTER THE PERIOD OF TREATMENT
29 IS TOLLED FOR A PERIOD OF ONE HUNDRED EIGHTY DAYS, IF THE COURT IS SATISFIED
30 THAT THE AGENCY HAS MADE ACTIVE AND DILIGENT EFFORTS TO FIND AND RETURN THE
31 PATIENT TO APPROPRIATE TREATMENT, ON PETITION OF THE TREATMENT AGENCY, THE
32 COURT MAY TERMINATE THE ORDER FOR TREATMENT OR MAY ORDER THE TREATMENT AGENCY

1 TO MAKE FURTHER SPECIFIC EFFORTS TO FIND AND RETURN THE PATIENT TO
2 APPROPRIATE TREATMENT. THE TREATMENT AGENCY SHALL PROVIDE NOTICE TO THE
3 PROSECUTING AGENCY OF THE PETITION TO TERMINATE TREATMENT.

4 E. THE PERIOD OF TREATMENT UNDER A COURT ORDER MAY NOT BE TOLLED FOR
5 MORE THAN THREE HUNDRED SIXTY-FIVE DAYS.

6 F. IF THE TREATMENT AGENCY HAS IN GOOD FAITH FOLLOWED THE REQUIREMENTS
7 OF THIS SECTION, THE TREATMENT AGENCY IS NOT LIABLE IN A CIVIL ACTION FOR
8 DAMAGES THAT RESULT FROM THE ACTIONS OF A PATIENT DURING ANY PERIOD OF
9 TREATMENT TOLLED BY AN ORDER ISSUED PURSUANT TO THIS SECTION.

10 G. FOR THE PURPOSE OF THIS SECTION, "ABSENT WITHOUT PROPER
11 AUTHORIZATION" OR "UNAUTHORIZED ABSENCE" INCLUDES BEING ABSENT FROM AN
12 INPATIENT TREATMENT FACILITY WITHOUT AUTHORIZATION, NO LONGER LIVING IN A
13 PLACEMENT OR RESIDENCE SPECIFIED BY THE TREATMENT PLAN WITHOUT AUTHORIZATION
14 AND LEAVING OR FAILING TO RETURN TO THE COUNTY OR STATE WITHOUT
15 AUTHORIZATION.

16 Sec. 22. Section 36-546, Arizona Revised Statutes, is amended to read:

17 36-546. Judicial review; right to be informed; request;
18 jurisdiction

19 A. In addition to the procedure for applying for a writ of habeas
20 corpus, as provided in title 13, chapter 38, article 26, a patient receiving
21 court-ordered treatment or any person acting on the patient's behalf may
22 request the patient's release pursuant to the following:

23 1. A request in writing may be presented to any member of the
24 treatment staff of the agency providing the patient's treatment. The request
25 may be made on a prescribed form that shall be prepared by the facility and
26 made available for use by any person. The completed form shall identify:

27 (a) The patient being treated and the agency at which the patient is
28 being treated.

29 (b) The person to whom the request for release was made.

30 (c) The person making the request for release, indicating whether the
31 person is the patient being treated or someone acting on the person's behalf.

1 2. The request, when signed and dated by the person making the request
2 for release, shall be delivered to the medical director of the agency.
3 Within three days of receipt of the request, the medical director shall
4 deliver the form, along with a current psychiatric report of the patient's
5 condition, to the clerk of the court. If the person presenting the request
6 refuses to sign the form, the medical director of the agency shall proceed as
7 if the form had been signed and shall note on the form the circumstances as
8 to why the form was not signed.

9 B. The patient shall be informed of the patient's right to judicial
10 review by the medical director of the agency and the patient's right to
11 consult with counsel at least once each sixty days while the patient is
12 undergoing court-ordered treatment. The notification required by this
13 subsection shall be recorded in the clinical record of the patient by the
14 individual who gave the notice.

15 C. With the exception of requests made pursuant to section 36-540,
16 subsection E, paragraphs ~~4- 6~~ and ~~5- 7~~ and section 36-540.01, subsection ~~J- K~~
17 for judicial review, a request for judicial review may not be made sooner
18 than sixty days after the issuance of the order for treatment or a hearing on
19 a previous petition for habeas corpus or the issuance of the court order or
20 other final resolution determining a previous request for judicial review by
21 the patient.

22 D. Judicial review shall be in the superior court in the county in
23 which the patient is being treated. That court may review the additional
24 material presented and enter its order without necessity of further hearing.

25 E. The reviewing court may order a further hearing on the affidavit of
26 the attorney for the patient setting forth the need for further evidentiary
27 hearing and the reasons why the hearing is necessary before the time set for
28 the release of the patient.

29 F. The patient shall be informed of the patient's right to consult an
30 attorney by the person or court to whom the patient makes the request for
31 release at the time the patient makes the request and, in the case of
32 confinement in an agency, by the reviewing court within one day of its

1 receipt of notice from the medical director of the agency where the patient
2 is being treated. The patient shall be permitted to consult an attorney to
3 assist in preparation of a petition for the writ of habeas corpus and to
4 represent the patient in the hearing. If the patient is not represented by
5 an attorney, the reviewing court, within two days of its notice to the
6 patient of the patient's right to counsel, shall appoint an attorney to
7 assist the patient in the preparation of a petition and to represent the
8 patient in the hearing.

9 G. The medical director of the mental health treatment agency, at
10 least twenty-four hours before the hearing, shall provide the patient's
11 attorney with a copy of the patient's medical records.

12 H. The patient's attorney shall fulfill all of the following minimal
13 duties:

14 1. Within twenty-four hours of appointment, conduct an interview with
15 the patient.

16 2. At least twenty-four hours before the hearing, interview the
17 patient's treatment physician or psychiatric and mental health nurse
18 practitioner if available.

19 3. Before the hearing, examine the clinical record of the patient.

20 4. Before the hearing, examine the patient's court records as to the
21 patient's involuntary treatment.

22 I. An attorney who does not fulfill the duties prescribed by
23 subsection H of this section is subject to contempt of court.

24 Sec. 23. Section 36-3701, Arizona Revised Statutes, is amended to
25 read:

26 36-3701. Definitions

27 In this article, unless the context otherwise requires:

28 1. "Agency" means any agency that is authorized to direct the release
29 of a person who is serving a sentence or term of confinement or who is
30 receiving treatment, including a state or federal prison, a county jail and
31 the Arizona state hospital OR OTHER MENTAL HEALTH TREATMENT AGENCY.

32 2. "Competent professional" means a person who is:

1 (a) Familiar with the state's sexually violent persons statutes and
2 sexual offender treatment programs available in this state.

3 (b) Approved by the superior court as meeting court approved
4 guidelines.

5 3. "Conviction" includes a finding of guilt at any time for a sexually
6 violent offense or an order of the juvenile court adjudicating the person
7 delinquent for any sexually violent offense.

8 4. "Less restrictive alternative" means court ordered treatment in a
9 setting that is less restrictive than total confinement and that is conducted
10 in a setting approved by the superintendent of the state hospital.

11 5. "Mental disorder" means a paraphilia, personality disorder or
12 conduct disorder or any combination of paraphilia, personality disorder and
13 conduct disorder that predisposes a person to commit sexual acts to such a
14 degree as to render the person a danger to the health and safety of others.

15 6. "Sexually violent offense" means any of the following:

16 (a) Indecent exposure to a person who is under fifteen years of age
17 pursuant to section 13-1402, public sexual indecency to a minor pursuant to
18 section 13-1403, sexual conduct with a minor pursuant to section 13-1405,
19 sexual assault pursuant to section 13-1406, molestation of a child pursuant
20 to section 13-1410, continuous sexual abuse of a child pursuant to section
21 13-1417 or sexual assault of a spouse if the offense was committed before
22 August 12, 2005.

23 (b) Second degree murder pursuant to section 13-1104, first degree
24 murder pursuant to section 13-1105, assault pursuant to section 13-1203,
25 aggravated assault pursuant to section 13-1204, unlawful imprisonment
26 pursuant to section 13-1303, kidnapping pursuant to section 13-1304 or
27 burglary in the first degree pursuant to section 13-1508 if the court at the
28 time of sentencing or civil commitment proceedings determines beyond a
29 reasonable doubt that the act was sexually motivated pursuant to section
30 13-118.

31 (c) An attempt, a solicitation, a facilitation or a conspiracy to
32 commit an offense listed in subdivision (a) or (b) of this paragraph.

1 (d) An act committed in another jurisdiction that if committed in this
2 state would be a sexually violent offense listed in subdivision (a), (b) or
3 (c) of this paragraph.

4 (e) A conviction for a felony offense that was in effect before
5 September 1, 1978 and that if committed on or after September 1, 1978 would
6 be comparable to a sexually violent offense listed in subdivision (a) or (b)
7 of this paragraph.

8 7. "Sexually violent person" means a person to whom both of the
9 following apply:

10 (a) Has ever been convicted of or found guilty but insane of a
11 sexually violent offense or was charged with a sexually violent offense and
12 was determined incompetent to stand trial.

13 (b) Has a mental disorder that makes the person likely to engage in
14 acts of sexual violence.

15 Sec. 24. Title 36, Arizona Revised Statutes, is amended by adding
16 chapter 40, to read:

17 CHAPTER 40

18 DANGEROUS AND INCOMPETENT PERSONS

19 ARTICLE 1. GENERAL PROVISIONS

20 36-4001. Definitions

21 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

22 1. "COMPETENT PROFESSIONAL" MEANS A PERSON WHO IS:

23 (a) FAMILIAR WITH THIS STATE'S CRIMINAL AND INVOLUNTARY COMMITMENT
24 STANDARDS AND STATUTES FOR PERSONS WITH A MENTAL ILLNESS, DEFECT OR
25 DISABILITY THAT ARE AVAILABLE IN THIS STATE.

26 (b) APPROVED BY THE SUPERIOR COURT AS MEETING COURT APPROVED
27 GUIDELINES.

28 2. "DANGEROUS INCOMPETENT" MEANS A PERSON WHO HAS BEEN DETERMINED TO
29 BE INCOMPETENT AND NONRESTORABLE AND DANGEROUS PURSUANT TO TITLE 13,
30 CHAPTER 41.

1 3. "LESS RESTRICTIVE ALTERNATIVE" MEANS COURT ORDERED TREATMENT IN A
2 SETTING THAT IS LESS RESTRICTIVE THAN TOTAL CONFINEMENT AND THAT IS CONDUCTED
3 IN A SETTING APPROVED BY THE SUPERINTENDENT OF THE STATE HOSPITAL.

4 4. "MENTAL ILLNESS, DEFECT OR DISABILITY" MEANS A PSYCHIATRIC OR
5 NEUROLOGICAL DISORDER THAT IS EVIDENCED BY BEHAVIORAL OR EMOTIONAL SYMPTOMS,
6 INCLUDING CONGENITAL MENTAL CONDITIONS, CONDITIONS RESULTING FROM INJURY OR
7 DISEASE AND DEVELOPMENTAL DISABILITIES AS DEFINED IN SECTION 36-551.

8 36-4002. Annual examination of committed persons: report

9 A. THE PSYCHIATRIST, PSYCHOLOGIST OR OTHER COMPETENT PROFESSIONAL OF
10 THE STATE HOSPITAL OR A LICENSED FACILITY UNDER THE SUPERVISION OF THE
11 ARIZONA STATE HOSPITAL SHALL ANNUALLY EXAMINE EACH PERSON WHO IS COMMITTED
12 PURSUANT TO SECTION 13-4518. THE PERSON WHO CONDUCTS THE ANNUAL EXAMINATION
13 SHALL SUBMIT THE EXAMINATION REPORT TO THE COURT. THE ANNUAL REPORT SHALL
14 STATE THE TREATMENT AND EDUCATION THAT THE PERSON HAS RECEIVED, A PROGNOSIS
15 FOR THE PERSON'S RESTORATION TO COMPETENCY AND WHETHER THE PERSON REMAINS
16 DANGEROUS.

17 B. IF THE PSYCHIATRIST, PSYCHOLOGIST OR OTHER COMPETENT PROFESSIONAL
18 SUBMITS A REPORT INDICATING THAT THE PERSON IS COMPETENT TO STAND TRIAL OR IS
19 NO LONGER DANGEROUS THE COURT SHALL HOLD A HEARING TO DETERMINE WHETHER THE
20 PERSON IS COMPETENT OR IS NO LONGER DANGEROUS.

21 C. IF THE PSYCHIATRIST, PSYCHOLOGIST OR OTHER COMPETENT PROFESSIONAL
22 SUBMITS A REPORT THAT THE PERSON IS NO LONGER DANGEROUS IN WHOLE OR IN PART
23 BECAUSE OF MEDICATION THAT THE PERSON IS TAKING, THE REPORT SHALL STATE
24 WHETHER THE DEFENDANT WILL CONTINUE TO TAKE THAT MEDICATION IF RELEASED TO A
25 LESS RESTRICTIVE ALTERNATIVE AND WOULD COMPLY WITH ALL OTHER CONDITIONS OF A
26 LESS RESTRICTIVE ALTERNATIVE.

27 D. THE COURT SHALL HOLD THE HEARING WITHIN FORTY-FIVE DAYS AFTER
28 RECEIVING THE REPORT. THE COURT MAY CONTINUE THE HEARING ON THE REQUEST OF
29 EITHER PARTY AND A SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE PERSON
30 WILL NOT BE SUBSTANTIALLY PREJUDICED. THE PROSECUTING AGENCY SHALL REPRESENT
31 THE STATE AT THE HEARING AND MAY REQUEST THAT THE PERSON BE EXAMINED BY A
32 COMPETENT PROFESSIONAL SELECTED BY THE PROSECUTING AGENCY. THE ATTORNEY FOR

1 THE STATE HAS THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE
2 PERSON'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS NOT CHANGED AND THAT THE
3 PERSON REMAINS DANGEROUS OR THAT THE PERSON IS COMPETENT TO STAND TRIAL.

4 E. A RETAINED OR APPOINTED COMPETENT PROFESSIONAL SHALL HAVE ACCESS TO
5 ALL RECORDS CONCERNING THE PERSON. ALL COMPETENT PROFESSIONALS SHALL HAVE
6 EQUAL ACCESS TO THE PERSON AS WELL AS ALL RECORDS CONCERNING THE PERSON.

7 F. THIS SECTION DOES NOT PRECLUDE THE PERSON FROM PETITIONING THE
8 COURT FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE OR
9 UNCONDITIONAL DISCHARGE FROM TREATMENT PURSUANT TO SECTION 36-4004.

10 36-4003. Disposition

11 AFTER A HEARING PURSUANT TO SECTION 36-4002 OR 36-4004, IF THE COURT
12 FINDS THAT:

13 1. THE PERSON HAS BEEN RESTORED TO COMPETENCY, THE COURT SHALL ORDER
14 THAT THE CRIMINAL PROCEEDINGS RESUME.

15 2. THE PERSON HAS NOT BEEN RESTORED TO COMPETENCY AND:

16 (a) THE PERSON IS NOT DANGEROUS, THE COURT SHALL RELEASE THE PERSON
17 FROM TREATMENT AND PROCEED PURSUANT TO SECTION 13-4517, PARAGRAPH 1, 2 OR 3.

18 (b) THE PERSON IS NOT DANGEROUS IN WHOLE OR IN PART BECAUSE OF THE
19 HABILITATION OR TREATMENT THAT THE PATIENT IS RECEIVING, INCLUDING THE TAKING
20 OF MEDICATION, THE COURT MAY RELEASE THE PERSON TO A LESS RESTRICTIVE
21 ALTERNATIVE PURSUANT TO SECTIONS 36-4005 AND 36-4006.

22 (c) THE PERSON IS DANGEROUS, THE PERSON SHALL REMAIN COMMITTED FOR
23 EDUCATION, CARE, SUPERVISION AND TREATMENT TO RENDER THE PERSON COMPETENT OR
24 NONDANGEROUS.

25 36-4004. Petition for change of status; procedures

26 A. IF THE SUPERINTENDENT OF THE STATE HOSPITAL OR THE DIRECTOR OF THE
27 DEPARTMENT OF HEALTH SERVICES DETERMINES THAT THE PERSON'S MENTAL ILLNESS,
28 DEFECT OR DISABILITY HAS SO CHANGED THAT THE PERSON IS NO LONGER DANGEROUS IF
29 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE, THE SUPERINTENDENT
30 OR DIRECTOR SHALL ALLOW THE PERSON TO PETITION THE COURT FOR CONDITIONAL
31 RELEASE TO A LESS RESTRICTIVE ALTERNATIVE. THE PERSON SHALL SERVE THE
32 PETITION ON THE COURT AND THE ATTORNEY FOR THE STATE. THE COURT SHALL HOLD A

1 HEARING ON THE PETITION FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE
2 ALTERNATIVE WITHIN FORTY-FIVE DAYS AFTER RECEIVING THE PETITION. THE COURT
3 MAY CONTINUE THE HEARING ON THE REQUEST OF EITHER PARTY AND A SHOWING OF GOOD
4 CAUSE OR ON ITS OWN MOTION IF THE PERSON WILL NOT BE SUBSTANTIALLY
5 PREJUDICED. THE PROSECUTING AGENCY SHALL REPRESENT THE STATE AT THE HEARING
6 AND MAY REQUEST THAT THE PERSON BE EXAMINED BY A COMPETENT PROFESSIONAL
7 SELECTED BY THE PROSECUTING AGENCY.

8 B. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF PROVING BY CLEAR AND
9 CONVINCING EVIDENCE THAT THE PERSON'S MENTAL ILLNESS, DEFECT OR DISABILITY
10 HAS NOT CHANGED AND THAT THE PERSON REMAINS DANGEROUS IF CONDITIONALLY
11 RELEASED TO A LESS RESTRICTIVE ALTERNATIVE OR UNCONDITIONALLY DISCHARGED.

12 C. THIS SECTION DOES NOT PROHIBIT THE COMMITTED PERSON FROM ANNUALLY
13 PETITIONING THE COURT FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE
14 ALTERNATIVE WITHOUT THE APPROVAL OF THE SUPERINTENDENT OF THE STATE HOSPITAL
15 OR THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES. THE DIRECTOR OF THE
16 DEPARTMENT OF HEALTH SERVICES SHALL PROVIDE AN ANNUAL WRITTEN NOTICE TO THE
17 COMMITTED PERSON OF THE PERSON'S RIGHT TO PETITION THE COURT FOR CONDITIONAL
18 RELEASE TO A LESS RESTRICTIVE ALTERNATIVE WITHOUT THE APPROVAL OF THE
19 SUPERINTENDENT OR DIRECTOR. THE NOTICE MUST CONTAIN A WAIVER OF RIGHTS. THE
20 DIRECTOR SHALL SUBMIT THE NOTICE AND WAIVER TO THE COURT WITH THE ANNUAL
21 EXAMINATION REPORT.

22 D. THE COMMITTED PERSON MAY BE PRESENT AT THE HEARING. THE
23 PROSECUTING AGENCY MAY REQUEST THAT THE PERSON BE EXAMINED BY A COMPETENT
24 PROFESSIONAL SELECTED BY THE PROSECUTING AGENCY. THE COMMITTED PERSON MAY
25 RETAIN AND THE COURT, ON REQUEST OF AN INDIGENT PERSON, MAY APPOINT A
26 COMPETENT PROFESSIONAL. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF PROVING
27 BY CLEAR AND CONVINCING EVIDENCE THAT THE PERSON'S MENTAL ILLNESS, DEFECT OR
28 DISABILITY HAS NOT CHANGED AND THAT THE PERSON REMAINS DANGEROUS IF
29 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE. IF THE STATE DOES
30 NOT MEET ITS BURDEN OF PROOF, THE PERSON SHALL BE DISCHARGED FROM TREATMENT.

31 E. AT THE CONCLUSION OF A HEARING, IF THE COURT FINDS THAT THERE IS NO
32 LEGALLY SUFFICIENT EVIDENTIARY BASIS TO CONCLUDE THAT THE CONDITIONS

1 PRESCRIBED IN SECTION 36-4006 HAVE BEEN MET, THE COURT SHALL GRANT THE
2 STATE'S MOTION FOR A JUDGMENT ON THE ISSUE OF CONDITIONAL RELEASE TO A LESS
3 RESTRICTIVE ALTERNATIVE.

4 36-4005. Conditional release to a less restrictive alternative;
5 conditions; reports; review

6 A. IF THE COURT DETERMINES THAT CONDITIONAL RELEASE TO A LESS
7 RESTRICTIVE ALTERNATIVE IS IN THE BEST INTEREST OF THE PERSON AND WILL
8 ADEQUATELY PROTECT THE COMMUNITY AND THE COURT DETERMINES THAT THE MINIMUM
9 CONDITIONS UNDER SECTION 36-4006 ARE MET, THE COURT SHALL ENTER JUDGMENT AND
10 ORDER THE PERSON'S CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE.

11 B. IF THE COURT CONCLUDES THAT THE ONLY REASON THE PERSON DOES NOT
12 MEET THE STANDARD FOR CONTINUED COMMITMENT IS THE EFFECT OF TREATMENT OR
13 HABILITATION BEING RECEIVED, THE COURT MAY DENY THE REQUEST FOR CONDITIONAL
14 RELEASE TO A LESS RESTRICTIVE ALTERNATIVE UNLESS THE COURT FINDS BY A
15 PREPONDERANCE OF THE EVIDENCE THAT THE PERSON WILL CONTINUE TO RECEIVE SUCH
16 TREATMENT AND HABILITATION FOLLOWING RELEASE FOR AS LONG AS THE TREATMENT AND
17 HABILITATION IS REQUIRED. IF THE COURT FINDS THAT THE PERSON WILL CONTINUE
18 TO RECEIVE THE NEEDED TREATMENT OR HABILITATION, IT MAY ORDER THE PERSON TO
19 BE CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE ON THE CONDITION
20 THAT THE PERSON CONTINUE TO RECEIVE SUCH TREATMENT OR HABILITATION. IF THE
21 PERSON FAILS TO RECEIVE THE TREATMENT OR HABILITATION ORDERED, THE COURT MAY
22 REVOKE THE CONDITIONAL RELEASE.

23 C. THE COURT MAY IMPOSE ANY ADDITIONAL CONDITIONS ON THE PERSON THAT
24 THE COURT DETERMINES ARE NECESSARY TO ENSURE THE PERSON'S COMPLIANCE WITH
25 TREATMENT AND TO PROTECT THE COMMUNITY. IF THE COURT FINDS THAT CONDITIONS
26 DO NOT EXIST THAT WILL BOTH ENSURE THE PERSON'S COMPLIANCE WITH TREATMENT AND
27 PROTECT THE COMMUNITY, THE COURT SHALL REMAND THE PERSON TO THE CUSTODY OF
28 THE SUPERINTENDENT OF THE STATE HOSPITAL FOR CARE, SUPERVISION OR TREATMENT
29 IN A LICENSED FACILITY THAT IS UNDER THE SUPERVISION OF THE SUPERINTENDENT.

30 D. IF THE PROVIDER THAT IS DESIGNATED TO PROVIDE INPATIENT OR
31 OUTPATIENT TREATMENT OR TO MONITOR OR SUPERVISE ANY OTHER TERMS AND
32 CONDITIONS OF A PERSON'S PLACEMENT IN A LESS RESTRICTIVE ALTERNATIVE IS NOT

1 THE STATE HOSPITAL, THE PROVIDER SHALL AGREE IN WRITING TO PROVIDE THE
2 TREATMENT.

3 E. BEFORE THE COURT AUTHORIZES A PERSON'S CONDITIONAL RELEASE TO A
4 LESS RESTRICTIVE ALTERNATIVE, THE COURT SHALL IMPOSE ANY CONDITIONS ON THE
5 PERSON THAT THE COURT DETERMINES ARE NECESSARY TO ENSURE THE SAFETY OF THE
6 COMMUNITY. THE CONDITIONS SHALL INCLUDE THAT BEFORE A RELEASE TO A LESS
7 RESTRICTIVE ALTERNATIVE, A PERSON SHALL BE REQUIRED TO SUBMIT TO NINETY DAYS
8 OF INPATIENT EVALUATION AT THE ARIZONA STATE HOSPITAL. AT THE DISCRETION OF
9 THE SUPERINTENDENT OF THE STATE HOSPITAL, THE DURATION OF THE EVALUATION
10 PERIOD MAY BE LESS THAN NINETY DAYS. THE COURT SHALL ORDER THE
11 SUPERINTENDENT OF THE STATE HOSPITAL TO INVESTIGATE THE LESS RESTRICTIVE
12 ALTERNATIVE AND TO SUBMIT ADDITIONAL CONDITIONS TO THE COURT. THE COURT
13 SHALL GIVE A COPY OF THE CONDITIONS OF RELEASE TO THE PERSON AND TO ANY
14 DESIGNATED SERVICE PROVIDER. OTHER CONDITIONS MAY INCLUDE ANY OF THE
15 FOLLOWING:

16 1. SPECIFICATION OF A RESIDENCE.

17 2. COMPLIANCE WITH ANY MEDICATIONS PRESCRIBED AND ANY TESTING OR
18 MONITORING REQUIRED.

19 3. PROHIBITION ON ANY CONTACT WITH POTENTIAL OR PAST VICTIMS OR OTHER
20 PERSONS AND PROHIBITION ON ASSOCIATING WITH OTHER PERSONS OR TYPES OF
21 PERSONS.

22 4. PROHIBITION ON THE USE OF ALCOHOL AND OTHER DRUGS.

23 5. SUPERVISION BY THE DEPARTMENT OF HEALTH SERVICES.

24 6. A REQUIREMENT THAT THE PERSON REMAIN IN THIS STATE UNLESS THE
25 PERSON RECEIVES PRIOR AUTHORIZATION FROM THE COURT.

26 7. COMPLIANCE WITH ANY SUPERVISION OR MONITORING OR REPORTING
27 REQUIRED.

28 8. OTHER CONDITIONS THAT THE COURT OR THE SUPERINTENDENT OF THE STATE
29 HOSPITAL DETERMINES ARE IN THE BEST INTEREST OF THE PERSON OR OTHERS.

30 F. FOLLOWING A DETERMINATION THAT A PERSON'S RELEASE TO A LESS
31 RESTRICTIVE ALTERNATIVE IS WARRANTED AND AFTER CONSIDERING THE RECOMMENDATION
32 REGARDING THE DURATION AND AMOUNT OF TREATMENT BY THE SUPERINTENDENT OF THE

1 STATE HOSPITAL, THE COURT SHALL REQUIRE AS A CONDITION OF RELEASE TO A LESS
2 RESTRICTIVE ALTERNATIVE THAT THE PERSON PARTICIPATE IN OUTPATIENT TREATMENT.
3 THE OUTPATIENT SUPERVISION AND TREATMENT MAY INCLUDE MONITORING A PERSON BY
4 USE OF AN ELECTRONIC BRACELET. THE TREATMENT SHALL CONTINUE UNTIL THE COURT
5 ORDERS A CHANGE IN THE PERSON'S TREATMENT REQUIREMENTS OR THE PERSON IS
6 DISCHARGED PURSUANT TO SECTION 36-4009.

7 G. EACH MONTH OR AS OTHERWISE DIRECTED BY THE COURT, EACH DESIGNATED
8 SERVICE PROVIDER SHALL SUBMIT A REPORT THAT STATES WHETHER THE PERSON IS
9 COMPLYING WITH THE TERMS AND CONDITIONS OF THE CONDITIONAL RELEASE TO A LESS
10 RESTRICTIVE ALTERNATIVE TO:

11 1. THE COURT.

12 2. THE FACILITY FROM WHICH THE PERSON WAS RELEASED.

13 3. THE COUNTY ATTORNEY IN THE COUNTY WHERE THE PERSON WAS FOUND TO BE
14 A DANGEROUS INCOMPETENT OR TO THE ATTORNEY GENERAL.

15 H. THE COURT SHALL REVIEW THE CASE OF EACH PERSON WHO IS CONDITIONALLY
16 RELEASED TO A LESS RESTRICTIVE ALTERNATIVE WITHIN ONE YEAR AFTER THE PERSON'S
17 RELEASE AND THEREAFTER ON MOTION OF EITHER PARTY OR THE SUPERINTENDENT OF THE
18 STATE HOSPITAL OR ON THE COURT'S OWN MOTION UNTIL THE PERSON IS DISCHARGED.
19 AT A CASE REVIEW, THE COURT SHALL DETERMINE ONLY IF THE PERSON SHALL CONTINUE
20 TO BE CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE. IN MAKING
21 ITS DETERMINATION, THE COURT SHALL CONSIDER THE PERIODIC REPORTS THAT ARE
22 SUBMITTED TO THE COURT PURSUANT TO SUBSECTION G OF THIS SECTION AND THE
23 OPINIONS OF THE SUPERINTENDENT OF THE STATE HOSPITAL AND ANY OTHER COMPETENT
24 PROFESSIONAL.

25 I. IF A PERSON IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE
26 ALTERNATIVE, THE DEPARTMENT OF HEALTH SERVICES SHALL NOTIFY THE DEPARTMENT OF
27 PUBLIC SAFETY OF THE PERSON'S RELEASE SO THAT THE DEPARTMENT OF PUBLIC SAFETY
28 CAN COMMENCE ANY APPLICABLE NOTIFICATION PROCESS AS PROVIDED IN SECTION
29 13-3825.

30 36-4006. Conditional release to a less restrictive alternative;
31 findings

1 BEFORE THE COURT ORDERS THAT A PERSON BE CONDITIONALLY RELEASED TO A
2 LESS RESTRICTIVE ALTERNATIVE, THE COURT SHALL FIND THAT ALL OF THE FOLLOWING
3 APPLY:

4 1. THE PERSON WILL BE TREATED BY A PROVIDER WHO IS QUALIFIED TO
5 PROVIDE THE NECESSARY TREATMENT IN THIS STATE.

6 2. THE PROVIDER PRESENTS A SPECIFIC COURSE OF TREATMENT FOR THE
7 PERSON, AGREES TO ASSUME RESPONSIBILITY FOR THE PERSON'S TREATMENT, WILL
8 REPORT ON THE PERSON'S PROGRESS TO THE COURT ON A REGULAR BASIS AND WILL
9 REPORT ANY VIOLATIONS AS PRESCRIBED IN PARAGRAPHS 4 AND 5 OF THIS SUBSECTION
10 IMMEDIATELY TO THE COURT, THE ATTORNEY FOR THE STATE AND THE SUPERINTENDENT
11 OF THE STATE HOSPITAL.

12 3. THE PERSON WHO IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE
13 ALTERNATIVE HAS HOUSING ARRANGEMENTS THAT ARE SUFFICIENTLY SECURE TO PROTECT
14 THE COMMUNITY AND THE PERSON OR AGENCY THAT IS PROVIDING THE HOUSING TO THE
15 CONDITIONALLY RELEASED PERSON AGREES IN WRITING TO THE FOLLOWING CONDITIONS:

16 (a) TO ACCEPT THE CONDITIONALLY RELEASED PERSON.

17 (b) TO PROVIDE THE LEVEL OF SECURITY THAT THE COURT REQUIRES.

18 (c) TO IMMEDIATELY REPORT THE UNAUTHORIZED ABSENCE OF THE
19 CONDITIONALLY RELEASED PERSON FROM THE HOUSING ARRANGEMENT TO WHICH THE
20 PERSON HAS BEEN ASSIGNED.

21 4. THE PERSON WILL COMPLY WITH THE PROVIDER AND ALL OF THE
22 REQUIREMENTS THAT ARE IMPOSED BY THE PROVIDER AND THE COURT.

23 5. THE PERSON WILL COMPLY WITH THE SUPERVISION REQUIREMENTS THAT ARE
24 IMPOSED BY THE DEPARTMENT OF HEALTH SERVICES.

25 36-4007. Detention and commitment requirements; definition

26 A. A PERSON WHO IS COMMITTED OR CONDITIONALLY RELEASED TO A LESS
27 RESTRICTIVE ALTERNATIVE PURSUANT TO THIS ARTICLE DOES NOT FORFEIT ANY LEGAL
28 RIGHT AND SHALL NOT SUFFER ANY LEGAL DISABILITY AS A CONSEQUENCE OF ANY
29 ACTIONS TAKEN OR ORDERS MADE EXCEPT AS SPECIFICALLY PROVIDED IN THIS ARTICLE.

30 B. A PERSON WHO IS COMMITTED OR CONDITIONALLY RELEASED TO A LESS
31 RESTRICTIVE ALTERNATIVE PURSUANT TO THIS ARTICLE SHALL RECEIVE CARE,
32 SUPERVISION OR TREATMENT. THE SUPERINTENDENT OF THE STATE HOSPITAL SHALL

1 KEEP RECORDS DETAILING ALL MEDICAL, EXPERT AND PROFESSIONAL CARE AND
2 TREATMENT THAT A COMMITTED PERSON RECEIVES AND SHALL KEEP COPIES OF ALL
3 REPORTS OF PERIODIC EXAMINATIONS THAT ARE MADE PURSUANT TO THIS ARTICLE.
4 THESE RECORDS AND REPORTS SHALL BE MADE AVAILABLE ON REQUEST ONLY TO ANY OF
5 THE FOLLOWING:

- 6 1. THE COMMITTED PERSON.
- 7 2. THE COMMITTED PERSON'S ATTORNEY.
- 8 3. THE COUNTY ATTORNEY OR THE ATTORNEY GENERAL.
- 9 4. THE COURT.

10 5. ON PROPER SHOWING, AN EXPERT OR PROFESSIONAL PERSON WHO
11 DEMONSTRATES A NEED FOR ACCESS TO THE RECORDS OR REPORTS.

12 6. ANY MENTAL HEALTH PROFESSIONAL DIRECTLY RESPONSIBLE OR ASSOCIATED
13 WITH THE MENTAL HEALTH PROFESSIONAL WHO IS DIRECTLY RESPONSIBLE FOR THE CARE,
14 CONTROL, ASSESSMENT OR TREATMENT OF THE COMMITTED PERSON.

15 C. AT THE TIME A PERSON IS DETAINED OR TRANSFERRED INTO A LICENSED
16 FACILITY PURSUANT TO THIS ARTICLE, THE PERSON IN CHARGE OF THE FACILITY OR
17 THE PERSON'S DESIGNEE SHALL TAKE REASONABLE PRECAUTIONS TO INVENTORY AND
18 SAFEGUARD THE PERSONAL PROPERTY OF THE DETAINED OR TRANSFERRED PERSON. THE
19 STAFF MEMBER WHO MAKES AN INVENTORY OF THE PERSON'S PERSONAL PROPERTY SHALL
20 GIVE A SIGNED COPY OF THAT INVENTORY TO THE PERSON. THE FACILITY SHALL ALLOW
21 A RESPONSIBLE RELATIVE TO INSPECT THE PROPERTY, SUBJECT TO ANY LIMITATIONS
22 THAT THE PERSON SPECIFICALLY IMPOSES. THE FACILITY SHALL NOT DISCLOSE THE
23 CONTENTS OF THE INVENTORY TO ANY OTHER PERSON WITHOUT THE CONSENT OF THE
24 PERSON OR A COURT ORDER.

25 D. THIS ARTICLE DOES NOT PROHIBIT A PERSON WHO IS COMMITTED OR
26 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE FROM EXERCISING ANY
27 RIGHT THAT IS AVAILABLE FOR THE PURPOSE OF OBTAINING RELEASE FROM
28 CONFINEMENT, INCLUDING THE RIGHT TO PETITION FOR A WRIT OF HABEAS CORPUS.
29 THE COMMITTED PERSON MUST EXHAUST ALL DIRECT APPEAL AND POSTCOMMITMENT
30 PROCEDURES BEFORE EXERCISING THE COMMITTED PERSON'S RIGHT TO PETITION FOR A
31 WRIT OF HABEAS CORPUS.

1 E. A PERSON WHO IS INDIGENT MAY NOT BE CONDITIONALLY RELEASED TO A
2 LESS RESTRICTIVE ALTERNATIVE OR DISCHARGED WITHOUT SUITABLE CLOTHING. WHEN A
3 PERSON IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE OR
4 DISCHARGED, THE SUPERINTENDENT OF THE STATE HOSPITAL SHALL FURNISH THE PERSON
5 WITH AN AMOUNT OF MONEY PURSUANT TO SECTION 31-228.

6 F. FOR THE PURPOSES OF THIS SECTION, "RESPONSIBLE RELATIVE" MEANS THE
7 SPOUSE, PARENT, ADULT CHILD OR ADULT SIBLING OF THE PERSON AND INCLUDES THE
8 GUARDIAN, CONSERVATOR OR ATTORNEY OF THE PERSON.

9 36-4008. Revocation of conditional release to a less
10 restrictive alternative; hearing

11 A. IF THE PETITIONER OR THE COURT BELIEVES THAT THE PERSON WHO IS
12 CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE IS NOT COMPLYING
13 WITH THE TERMS AND CONDITIONS OF RELEASE OR IS IN NEED OF ADDITIONAL CARE AND
14 TREATMENT, THE DESIGNATED SERVICE PROVIDER OR THE ATTORNEY FOR THE STATE MAY
15 PETITION THE COURT FOR, OR THE COURT ON ITS OWN MOTION MAY SCHEDULE, A
16 HEARING FOR THE PURPOSE OF REVOKING OR MODIFYING THE TERMS AND CONDITIONS OF
17 THE PERSON'S CONDITIONAL RELEASE. THE HEARING SHALL BE HELD WITHIN TEN DAYS
18 AFTER THE PETITION IS FILED.

19 B. IF THE ATTORNEY FOR THE STATE OR THE COURT REASONABLY BELIEVES THAT
20 A PERSON WHO IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE IS
21 NOT COMPLYING WITH THE TERMS AND CONDITIONS OF THE PERSON'S CONDITIONAL
22 RELEASE, IS IN NEED OF ADDITIONAL CARE OR TREATMENT OR IF THE CIRCUMSTANCES
23 OF THE RELEASE HAVE CHANGED SO THAT THE COMMUNITY IS NO LONGER SAFE, THE
24 COURT OR THE DEPARTMENT OF HEALTH SERVICES MAY ORDER THAT THE CONDITIONALLY
25 RELEASED PERSON BE DETAINED AND TAKEN INTO CUSTODY UNTIL A HEARING CAN BE
26 SCHEDULED TO DETERMINE IF THE PERSON'S CONDITIONAL RELEASE SHOULD BE REVOKED
27 OR MODIFIED. THE COURT SHALL BE NOTIFIED BEFORE THE CLOSE OF THE NEXT
28 JUDICIAL DAY OF THE PERSON'S DETENTION. THE ATTORNEY FOR THE STATE AND THE
29 CONDITIONALLY RELEASED PERSON MAY REQUEST AN IMMEDIATE MENTAL EXAMINATION OF
30 THE PERSON. IF THE CONDITIONALLY RELEASED PERSON IS INDIGENT, THE COURT, ON
31 REQUEST, SHALL ASSIST THE PERSON IN OBTAINING A COMPETENT PROFESSIONAL TO
32 CONDUCT THE EXAMINATION.

1 C. WITHIN FIVE DAYS AFTER RECEIVING NOTICE OF THE PERSON'S DETENTION,
2 THE COURT SHALL SCHEDULE A HEARING. AT THE HEARING, THE COURT SHALL
3 DETERMINE IF THE STATE HAS PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT THE
4 PERSON WHO IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE DID
5 NOT COMPLY WITH THE TERMS AND CONDITIONS OF RELEASE, IS IN NEED OF ADDITIONAL
6 CARE OR TREATMENT OR IF THE CIRCUMSTANCES OF THE RELEASE HAVE CHANGED SO THAT
7 THE COMMUNITY IS NO LONGER SAFE AND IF THE PERSON SHOULD CONTINUE ON
8 CONDITIONAL RELEASE UNDER THE SAME OR MODIFIED CONDITIONS OR IF THE
9 CONDITIONAL RELEASE SHOULD BE REVOKED AND THE PERSON SHOULD BE COMMITTED TO
10 TOTAL CONFINEMENT, SUBJECT TO RELEASE ONLY UNDER THE PROVISIONS OF THIS
11 ARTICLE. THE COURT MAY ADMIT HEARSAY EVIDENCE IF THE COURT FINDS THAT THE
12 HEARSAY EVIDENCE IS OTHERWISE RELIABLE.

13 36-4009. Petition for discharge; procedures

14 A. IF THE SUPERINTENDENT OF THE STATE HOSPITAL OR THE DIRECTOR OF THE
15 DEPARTMENT OF HEALTH SERVICES DETERMINES THAT THE PERSON'S MENTAL ILLNESS,
16 DEFECT OR DISABILITY HAS SO CHANGED THAT THE PERSON IS NO LONGER DANGEROUS IF
17 DISCHARGED, THE SUPERINTENDENT OR DIRECTOR SHALL ALLOW THE PERSON TO PETITION
18 THE COURT FOR DISCHARGE. THE PERSON SHALL SERVE THE PETITION ON THE COURT
19 AND THE ATTORNEY FOR THE STATE. THE COURT SHALL HOLD A HEARING ON THE
20 PETITION FOR DISCHARGE WITHIN FORTY-FIVE DAYS AFTER RECEIVING THE PETITION.
21 THE COURT MAY CONTINUE THE HEARING ON THE REQUEST OF EITHER PARTY AND A
22 SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE RESPONDENT WILL NOT BE
23 SUBSTANTIALLY PREJUDICED. THE PROSECUTING AGENCY SHALL REPRESENT THE STATE
24 AT THE HEARING AND MAY REQUEST THAT THE PETITIONER BE EXAMINED BY A COMPETENT
25 PROFESSIONAL WHO IS SELECTED BY THE PROSECUTING AGENCY. THE ATTORNEY FOR THE
26 STATE HAS THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE
27 PETITIONER'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS NOT CHANGED AND THAT
28 THE PETITIONER REMAINS DANGEROUS OR THAT THE DEFENDANT IS CURRENTLY COMPETENT
29 TO STAND TRIAL.

30 B. THIS SECTION DOES NOT PROHIBIT THE COMMITTED PERSON FROM ANNUALLY
31 PETITIONING THE COURT FOR DISCHARGE WITHOUT THE APPROVAL OF THE
32 SUPERINTENDENT OF THE STATE HOSPITAL OR THE DIRECTOR OF THE DEPARTMENT OF

1 HEALTH SERVICES. THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES SHALL
2 GIVE ANNUAL WRITTEN NOTICE TO THE COMMITTED PERSON OF THE PERSON'S RIGHT TO
3 PETITION THE COURT FOR DISCHARGE WITHOUT THE APPROVAL OF THE SUPERINTENDENT
4 OR DIRECTOR. THE NOTICE SHALL CONTAIN A WAIVER OF RIGHTS. THE DIRECTOR
5 SHALL SUBMIT THE NOTICE AND WAIVER TO THE COURT WITH THE ANNUAL EXAMINATION
6 REPORT.

7 C. THE COMMITTED PERSON MAY BE PRESENT AT THE DISCHARGE HEARING. THE
8 PROSECUTING AGENCY MAY REQUEST THAT THE PERSON BE EXAMINED BY A COMPETENT
9 PROFESSIONAL WHO IS SELECTED BY THE ATTORNEY FOR THE STATE. THE COMMITTED
10 PERSON MAY RETAIN AND THE COURT ON THE REQUEST OF AN INDIGENT PERSON MAY
11 APPOINT A COMPETENT PROFESSIONAL. THE ATTORNEY FOR THE STATE HAS THE BURDEN
12 OF PROVING BEYOND A REASONABLE DOUBT THAT THE PERSON'S MENTAL ILLNESS, DEFECT
13 OR DISABILITY HAS NOT CHANGED AND THAT THE PERSON REMAINS A DANGER TO OTHERS
14 AND IS LIKELY TO ENGAGE IN ACTS THAT ARE A DANGER TO PUBLIC SAFETY IF
15 DISCHARGED. IF THE STATE DOES NOT MEET ITS BURDEN OF PROOF, THE PERSON SHALL
16 BE DISCHARGED FROM TREATMENT.

17 D. IF A PERSON IS DISCHARGED, THE DEPARTMENT OF HEALTH SERVICES SHALL
18 NOTIFY THE DEPARTMENT OF PUBLIC SAFETY OF THE PERSON'S DISCHARGE SO THAT THE
19 DEPARTMENT OF PUBLIC SAFETY CAN COMMENCE ANY NOTIFICATION PROCESS AS PROVIDED
20 IN SECTION 13-3825.

21 36-4010. Place for proceedings; transportation; immunity

22 A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, A PERSON WHO IS
23 DETAINED OR CIVILLY COMMITTED PURSUANT TO THIS ARTICLE SHALL NOT BE
24 TRANSPORTED FROM A LICENSED FACILITY UNDER THE SUPERVISION OF THE
25 SUPERINTENDENT OF THE ARIZONA STATE HOSPITAL, EXCEPT THAT A PERSON MAY BE
26 TRANSPORTED TO COURT FOR ANY OF THE FOLLOWING REASONS:

- 27 1. A HEARING ON AN ANNUAL EXAMINATION.
- 28 2. A HEARING ON A PETITION FOR CONDITIONAL RELEASE TO A LESS
29 RESTRICTIVE ALTERNATIVE PURSUANT TO SECTION 36-4005.
- 30 3. A HEARING ON A PETITION FOR DISCHARGE PURSUANT TO SECTION 36-4009.
- 31 4. ANY EVIDENTIARY HEARING IN WHICH THE PRESENCE OF A PERSON WHO IS
32 DETAINED OR CIVILLY COMMITTED PURSUANT TO THIS ARTICLE IS NECESSARY.

1 5. ANY COURT PROCEEDING NOT OTHERWISE SPECIFIED IN THIS ARTICLE WHERE
2 THE PRESENCE OF THE COMMITTED PERSON IS REQUIRED.

3 B. SUBSECTION A OF THIS SECTION DOES NOT APPLY TO ANY PERSON WHOM THE
4 COURT HAS DETERMINED IS SUBJECT TO CONDITIONAL RELEASE PURSUANT TO SECTION
5 36-4009 OR TO ANY NECESSARY MEDICAL TRANSPORTS.

6 C. SUBSECTION A OF THIS SECTION DOES NOT PRECLUDE ANY PROCEEDING FROM
7 BEING HELD ON THE GROUNDS OF THE ARIZONA STATE HOSPITAL OR FROM USING A
8 TELEPHONIC CONFERENCE OR AN INTERACTIVE AUDIOVISUAL DEVICE. THE COURT SHALL
9 ADOPT RULES CONCERNING THE CONDUCT OF PROCEEDINGS PURSUANT TO THIS ARTICLE.
10 THE RULES SHALL ENSURE THE SAFETY OF ALL PERSONS. THE RULES MAY INCLUDE
11 PROVISIONS THAT ALLOW FOR PROCEEDINGS TO BE HELD ON THE GROUNDS OF THE
12 ARIZONA STATE HOSPITAL OR FOR THE USE OF A TELEPHONIC CONFERENCE OR AN
13 INTERACTIVE AUDIOVISUAL DEVICE.

14 D. THE DEPARTMENT OF HEALTH SERVICES IS RESPONSIBLE FOR THE
15 TRANSPORTATION TO AND FROM A MEDICAL FACILITY OF A PERSON WHO IS DETAINED OR
16 COMMITTED PURSUANT TO THIS ARTICLE. THE DEPARTMENT OF HEALTH SERVICES SHALL
17 DETERMINE THE APPROPRIATE MODE OF TRANSPORTATION AND LEVEL OF SECURITY AND
18 RESTRAINT FOR THE TRANSPORTATION NEEDS OF THE PERSON. IN DETERMINING THE
19 APPROPRIATE MODE OF TRANSPORTATION AND LEVEL OF SECURITY AND RESTRAINT, THE
20 DEPARTMENT SHALL CONSIDER THE SAFETY OF THE PUBLIC, THE TRANSPORTING
21 PERSONNEL AND THE DETAINED OR COMMITTED PERSON.

22 E. THE DEPARTMENT OF HEALTH SERVICES AND ANY COUNTY SHERIFF ARE IMMUNE
23 FROM LIABILITY FOR ANY GOOD FAITH ACTS UNDER THIS SECTION.

24 Sec. 25. Effective date

25 This act is effective from and after December 31, 2016."

26 Amend title to conform

and, as so amended, it do pass

EDDIE FARNSWORTH
CHAIRMAN

1510JUDICIARY
03/16/2016
10:44 AM
H: KP/MA/rca